

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5609

By Delegates Burkhammer and Kimble

[Introduced February 12, 2024; Referred to the
Committee on Senior, Children, and Family Issues
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 the confidentiality of records; and providing that the Department of Human Services may
 3 provide the Foster Care Ombudsman the identity of a person who made a report of abuse
 4 or neglect related to a child fatality.

Be it enacted by the Legislature of West Virginia:

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 Human Services, a child agency or facility, or court or law-
 4 enforcement agency, are confidential and may 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;

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) In addition to those persons or entities to whom information may be disclosed under
38 subsection (b) and (c) of this section, information related to child abuse or neglect proceedings,
39 including information relating to the identity of the person reporting or making a complaint of child
40 abuse or neglect, shall be made available upon request to the Foster Care Ombudsman or its'
41 designee acting in the course of their official duties: *Provided*, That the Foster Care Ombudsman
42 or its' designee acting in the course of their official duties pursuant to §49-9-107 of this code.

43 ~~(d)~~ (e) If there is a child fatality or near fatality due to child abuse and neglect, information
44 relating to a fatality or near fatality shall be made public by the Department of Human Services and
45 provided to the entities described in subsection (c) of this section, all under the circumstances

46 described in that subsection: *Provided*, That information released by the Department of Human
47 Services pursuant to this subsection may not include the identity of a person reporting or making a
48 complaint of child abuse or neglect except when such information and records are released to the
49 Foster Care Ombudsman or its' designee acting in the course of their official duties, the identity of
50 a person reporting or making a complaint of child abuse or neglect may be included: *Provided*,
51 That the Foster Care Ombudsman or its' designee acting in the course of their official duties
52 pursuant to §49-9-107 of this code. For purposes of this subsection, "near fatality" means any
53 medical condition of the child which is certified by the attending physician to be life threatening.

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

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

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

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

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

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

73 (C) Has legal custody of the juvenile.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

115 ~~(p)~~ (q) The department shall provide electronic access to information required to perform
116 an adoption to child placing agencies as necessary to complete the adoption.

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

NOTE: The purpose of this bill is to providing that the Department of Human Services may provide the Foster Care Ombudsman the identity of a person who made a report of abuse or neglect related to a child fatality.

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