

H. B. 4594

(By Delegate Ellington, By Request)

[Introduced February 17, 2014; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §62-1G-1 of the Code of West Virginia,
1931, as amended; and to amend said code by adding thereto a
new section, designated §62-1G-3, all relating to authorizing
the issuance of a subpoena duces tecum to a law-enforcement
agency for documents or objects in aid of a criminal
investigation; definitions; authorization of issuance;
requirements for information to be provided with the
application for the subpoena.

Be it enacted by the Legislature of West Virginia:

That §62-1G-1 of the Code of West Virginia, 1931, as amended,
be amended and reenacted; and that said code be amended by adding
thereto a new section, designated §62-1G-3, all to read as follows:

ARTICLE 1G. SUBPOENA POWERS FOR AID OF CRIMINAL INVESTIGATION

RELATING TO CERTAIN OFFENSES. ~~AGAINST MINORS.~~

1 **§62-1G-1. Declaration of necessity.**

2 It is declared, as a matter of legislative determination, that
3 it is necessary to grant subpoena powers in aid of criminal
4 investigations of certain crimes, including certain crimes against
5 minors involving electronic communications systems or services or
6 remote computing services.

7 **§62-1G-3. Subpoena duces tecum for documents or objects which**
8 **may contain or constitute relevant evidence of the**
9 **commission of a crime.**

10 (a) As used in this section:

11 (1) "Documents" means and includes writings, books, papers,
12 maps, photographs, cards, images, tapes, records, recordings,
13 recorded data or other documentary materials regardless of physical
14 form, medium or characteristics;

15 (2) "Health care provider" means a person, partnership,
16 corporation, facility or institution licensed by, or certified in,
17 this state or another state, to provide health care or professional
18 health care services, including, but not limited to, a physician,
19 osteopathic physician, dentist, registered or licensed practical
20 nurse, optometrist, podiatrist, chiropractor, physical therapist,
21 pharmacist, psychologist, hospital, nursing home, personal care
22 home, residential care community and residential board and care
23 home, behavioral health care facility or comprehensive community

1 mental health/mental retardation center and emergency medical
2 services authority or agency.

3 (3) "Medical documents" means and includes without
4 restriction, those medical histories, records, reports, summaries,
5 diagnoses, and prognoses, records of treatment and medication
6 ordered and given, notes, entries, X-rays, and other written or
7 graphic data prepared, kept, made or maintained by a health care
8 provider that pertain to health care treatment or services to a
9 patient. Such records do not, however, include ordinary business
10 records pertaining to patients' accounts or the administration of
11 the institution.

12 (4) "Object" means a material or physical thing that can be
13 seen or touched.

14 (b) A law-enforcement agency investigating a criminal offense,
15 may, upon written application to a magistrate or a circuit court
16 judge be issued a subpoena duces tecum requiring the production of
17 documents or objects upon providing in the application and any
18 supporting affidavits or documents the following:

19 (1) The name, address, or other identifying information of
20 the person who has possession or custody the documents or objects
21 being sought;

22 (2) An adequate description of the alleged crime being
23 investigated;

24 (3) Information or a statement of facts based on credible

1 information, sources or authority to show that the documents or
2 objects are relevant to an issue in the investigation or relevant
3 to prove that an offense was committed;

4 (4) An adequate description of the documents or objects being
5 sought; and

6 (5) For medical documents or objects being sought:

7 (A) The name, address, or other identifying information of
8 the person about whom the medical documents or objects are being
9 sought; and

10 (B) The time period of the medical documents.

11 (c) A subpoena duces tecum issued under this section may be
12 applied for and issued prior to the filing of any charging
13 instrument containing charges for the potential crime being
14 investigated by the law-enforcement agency with any court.

15 (d) A subpoena duces tecum issued under this section for the
16 production of medical documents or objects shall state that the
17 health care provider shall produce only those records identified
18 in subdivision (3) of subsection (a) of this section, that are
19 reasonably necessary to the investigation of the suspected criminal
20 activity or offense as described in the subpoena.

21 (e) A health care provider that provides information in
22 response to a subpoena issued under this section may charge a fee,
23 not to exceed the fee allowed for copies of medical records
24 permitted by this code. The law-enforcement agency conducting the

1 investigation shall pay the fee.

2 (f) The health care provider served with or responding to the
3 subpoena shall not disclose the existence of the subpoena or its
4 response to the subpoena to the patient identified in the subpoena.

5 (g) If the health care provider served with the subpoena does
6 not own, control or have access to the medical documents or objects
7 that are the subject of the subpoena, the provider shall:

8 (1) Notify the investigating law-enforcement agency that it
9 does not have access to the medical documents or objects that is
10 the subject of the subpoena; and

11 (2) Provide to the investigating law-enforcement agency any
12 information the provider knows, through reasonable effort, that it
13 has regarding the health care provider that has access to the
14 medical documents or objects that are the subject of the subpoena.

15 (h) There shall be no cause of action against any health care
16 provider or its officers, employees, agents or other specified
17 persons for providing information, facilities or assistance in
18 accordance with the terms of the subpoena issued under this
19 section.

20 (i) Applications for subpoenas authorized by this section may
21 be transmitted to the appropriate court by any means permitted by
22 rules promulgated by the West Virginia Supreme Court of Appeals.

23 (j) The West Virginia Supreme Court of Appeals shall prescribe
24 a form to be used by law-enforcement agencies applying for a

1 subpoena authorized by this section.

NOTE: The purpose of this bill is to provide authority under certain circumstances for the issuance of a subpoena duces tecum to a law-enforcement agency for documents or objects in aid of a criminal investigation.

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

§62-1G-3 is new; therefore, it has been completely underscored.