

Senate Bill No. 544

(By Senators Laird and Cookman)

[Introduced February 12, 2014; referred to the Committee on
Interstate Cooperation; and then to the Committee on the
Judiciary.]

A BILL to amend and reenact §49-7-1 of the Code of West Virginia, 1931, as amended, relating to allowing the Division of Juvenile Services to share juvenile records under certain circumstances with another state if that state has a reciprocal agreement with this state; specifying the circumstances in which information which may be shared; authorizing the Division of Juvenile Services to enter into agreements with other states; and authorizing rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §49-7-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. GENERAL PROVISIONS.

1 **§49-7-1. Confidentiality of records.**

2 (a) Except as otherwise provided in this chapter or by order
3 of the court, all records and information concerning a child or
4 juvenile which are maintained by the Division of Juvenile Services,
5 the Department of Health and Human Resources, a child agency or
6 facility, court or law-enforcement agency shall be kept
7 confidential and shall not be released or disclosed to anyone,
8 including any federal or state agency.

9 (b) Notwithstanding the provisions of subsection (a) of this
10 section or any other provision of this code to the contrary,
11 records concerning a child or juvenile, except adoption records and
12 records disclosing the identity of a person making a complaint of
13 child abuse or neglect shall be made available:

14 (1) Where otherwise authorized by this chapter;

15 (2) To:

16 (A) The child;

17 (B) A parent whose parental rights have not been terminated;

18 or

19 (C) The attorney of the child or parent;

20 (3) With the written consent of the child or of someone
21 authorized to act on the child's behalf; or

22 (4) Pursuant to an order of a court of record: *Provided*, That
23 the court shall review such record or records for relevancy and

1 materiality to the issues in the proceeding and safety, and may
2 issue an order to limit the examination and use of the records or
3 any part thereof.

4 (c) In addition to those persons or entities to whom
5 information may be disclosed under subsection (b) of this section,
6 information related to child abuse or neglect proceedings, except
7 information relating to the identity of the person reporting or
8 making a complaint of child abuse or neglect, shall be made
9 available, upon request, to:

10 (1) Federal, state or local government entities, or any agent
11 of such entities, including law-enforcement agencies and
12 prosecuting attorneys, having a need for such information in order
13 to carry out its responsibilities under law to protect children
14 from abuse and neglect;

15 (2) The child fatality review team;

16 (3) Child abuse citizen review panels;

17 (4) Multidisciplinary investigative and treatment teams; or

18 (5) A grand jury, circuit court or family court, upon a
19 finding that information in the records is necessary for the
20 determination of an issue before the grand jury, circuit court or
21 family court.

22 (d) In the event of a child fatality or near fatality due to
23 child abuse and neglect, information relating to such fatality or

1 near fatality shall be made public by the Department of Health and
2 Human Resources and to the entities described in subsection (c) of
3 this section, all under the circumstances described in that
4 subsection: *Provided*, That information released by the Department
5 of Health and Human Resources pursuant to this subsection shall not
6 include the identity of a person reporting or making a complaint of
7 child abuse or neglect. For purposes of this subsection, "near
8 fatality" means any medical condition of the child which is
9 certified by the attending physician to be life threatening.

10 (e) Except in juvenile proceedings which are transferred to
11 criminal proceedings, law-enforcement records and files concerning
12 a child or juvenile shall be kept separate from the records and
13 files of adults and not included within the court files. Law-
14 enforcement records and files concerning a child or juvenile shall
15 only be open to inspection pursuant to the provisions of sections
16 seventeen and eighteen, article five of this chapter.

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

1 (g) Notwithstanding the provisions of this section, or any
2 other provision of this code to the contrary, the name and identity
3 of any juvenile adjudicated or convicted of a violent or felonious
4 crime shall be made available to the public.

5 (h) (1) Notwithstanding the provisions of this section, or any
6 other provision of this code to the contrary, the Division of
7 Juvenile Services may provide access to and the confidential use of
8 a treatment plan, or court record or other records of a juvenile
9 under the jurisdiction of this article, to any agency of a state
10 which:

11 (A) Performs the same functions in that state that are
12 performed by the Division Juvenile Services in this state and has
13 a reciprocal agreement with this state; and

14 (B) Has legal custody of the juvenile.

15 (2) A record which is shared under this subsection (h) may
16 only provide information which is relevant to the supervision, care
17 custody and treatment of the juvenile.

18 (3) The Division of Juvenile Services is authorized to enter
19 into reciprocal agreements with other states and to propose rules
20 for legislative approval in accordance with the provisions of
21 article three, chapter twenty-nine-a of this code to implement the
22 provisions of this subsection (h).

23 (4) This subsection (h) may not be construed to enlarge or

1 restrict access to juvenile records as is otherwise provided in
2 this code.

NOTE: The purpose of this bill is to allow sharing of juvenile records under certain circumstances with another state which has a reciprocal agreement with this state.

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