

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4541

BY DELEGATE FAST

[By Request of the Department of Homeland Security]

[Introduced February 03, 2022; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §49-5-101 of the Code of West Virginia, 1931, as amended, relating
 2 to permitting a current or former employee of the Division of Corrections and Rehabilitation
 3 access to relevant juvenile records for purposes of pursuing a grievance; permitting the
 4 release of such records only after a hearing to determine relevancy by the Public
 5 Employees Grievance Board; providing for the sealing of such relevant records from public
 6 view and the redaction of any identifying information related to the juvenile; placing certain
 7 limitations on the grieving party's use of such records; permitting a grieving party's
 8 representative access to such records; requiring a court order for any further use of such
 9 records outside of the grievance proceeding; subjecting the grievant and grievance
 10 representative to criminal penalties for violations of the section; and making technical
 11 corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. RECORD KEEPING AND DATABASE.

§49-5-101. Confidentiality of records; nonrelease 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 ~~Juvenile~~
 3 ~~Services~~ Corrections and Rehabilitation, the Department of Health and Human Resources, a child
 4 agency or facility, court or law-enforcement agency are confidential and shall not be released or
 5 disclosed to anyone, 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; or

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

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

17 (4) Pursuant to an order of a court of record. However, the court shall review the record
18 or records for relevancy and materiality to the issues in the proceeding and safety, and may issue
19 an order to limit the examination and use of the records or any part thereof.

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

24 (1) Federal, state or local government entities, or any agent of those entities, including
25 law-enforcement agencies and prosecuting attorneys, having a need for that information in order
26 to carry out its responsibilities under law to protect children from abuse and neglect;

27 (2) The child fatality review team;

28 (3) Child abuse citizen review panels;

29 (4) Multidisciplinary investigative and treatment teams; or

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

32 (d) In the event of a child fatality or near fatality due to child abuse and neglect, information
33 relating to a fatality or near fatality shall be made public by the Department of Health and Human
34 Resources and to the entities described in subsection (c) of this section, all under the
35 circumstances described in that subsection. However, information released by the Department of
36 Health and Human Resources pursuant to this subsection may not include the identity of a person
37 reporting or making a complaint of child abuse or neglect. For purposes of this subsection, "near
38 fatality" means any medical condition of the child which is certified by the attending physician to

39 be life threatening.

40 (e) Except in juvenile proceedings which are transferred to criminal proceedings, law-
41 enforcement records and files concerning a child or juvenile shall be kept separate from the
42 records and files of adults and not included within the court files. Law-enforcement records and
43 files concerning a child or juvenile shall only be open to inspection pursuant to section one
44 hundred three of this article.

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

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

52 (h)(1) Notwithstanding the provisions of this section or any other provision of this code to
53 the contrary, the Division of ~~Juvenile Services~~ Corrections and Rehabilitation may provide access
54 to and the confidential use of a treatment plan, court records or other records of a juvenile to an
55 agency in another state which:

56 (A) Performs the same functions in that state that are performed by the Division of ~~Juvenile~~
57 ~~Services~~ Corrections and Rehabilitation in this state;

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

59 (C) Has legal custody of the juvenile.

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

62 (3) The Division of ~~Juvenile Services~~ Corrections and Rehabilitation is authorized to enter
63 into reciprocal agreements with other states and to propose rules for legislative approval in
64 accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

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

67 (i) The records subject to disclosure pursuant to subsection (b) of this section shall not
68 include a recorded/videotaped interview, as defined in §62-6B-2(6) of this code, the disclosure of
69 which is exclusively subject to the provisions of section six of said article.

70 (j) Notwithstanding the provision of subsection (a) of this section, an employee of the
71 Division of Corrections and Rehabilitation who has properly filed a grievance pursuant to the
72 provisions of §6C-2-1 et seq. of this code may be provided with such records as determined by
73 the Public Employees Grievance Board, after a hearing on the record to determine relevancy to
74 the proceeding, and such records may be produced pursuant to a written discovery request or
75 introduced as evidence at a hearing and admitted under seal and permanently protected from
76 public view: *Provided*, That any written records disclosed pursuant to the provisions of this
77 subsection shall be redacted of all identifying information of any juvenile not relevant to the
78 resolution of the grievance: *Provided, however*, That, if relevant to the grievance proceeding,
79 video and audio records may be produced without redaction and shall be maintained in a manner
80 provided by this subsection: *Provided further*, That the current or former employee receiving the
81 records shall (a) use such records solely for the legitimate purposes of evidence and not for any
82 improper or unauthorized purpose; (b) not reproduce the record or further disseminate the record
83 to any person not authorized to receive it; and (c) immediately return all disclosed records to the
84 Division of Corrections and Rehabilitation for destruction following the conclusion of any grievance
85 proceedings: *And provided further*, That the employee receiving the records may allow his or her
86 grievance representative to view the records and a grievance representative shall also be subject
87 to the provisions of this section. Use of the records outside of the grievance proceedings set forth
88 in the subsection shall require an order of a court of competent jurisdiction as to the relevance of
89 such records to the proceeding and the issuance of an appropriate protective order. Any violation
90 of the provisions of this subsection by the aggrieved employee or grievance representative shall

91 be treated in accordance with subsection (f) of this section.

NOTE: The purpose of this bill is to permit the limited use of juvenile records in grievance proceedings regarding employees of the Division of Corrections and Rehabilitation when such records prove relevant. The bill permits the release of such records only after a hearing to determine relevancy by the Public Employees Grievance Board. The bill provides for the sealing of such relevant records from public view and the redaction of any identifying information related to the juvenile. The bill places certain limitations on the grieving party's use of such records. The bill permits a grieving party's representative access to such records. The bill requires a court order for any further use of such records outside of the grievance proceeding. The bill subjects the grievant and grievance representative to criminal penalties for violations of the section. Finally, the bill makes technical corrections.

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