

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 5609**

By Delegates Burkhammer, Kimble, and Petitto

[Originating in the Committee on the Judiciary;

Reported on February 22, 2024]



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) Information related to child abuse or neglect proceedings, including information relating  
38 to the identity of the person reporting or making a complaint of child abuse or neglect, shall be  
39 made available to the Foster Care Ombudsman, or its designee, upon request and acting in the  
40 course of their official duties pursuant to §49-9-107 of this code.

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

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

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

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

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

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

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

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

70 (C) Has legal custody of the juvenile.

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

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

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

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

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

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

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

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

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

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

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

95 (3) Records or other information released to a grievant or his or her counsel or  
96 representative pursuant to subsection (k) of this section may only be used for purposes of his or

97 her grievance proceeding and may not be disclosed, published, copied, or distributed for any other  
98 purpose, and upon the conclusion of the grievance procedure, returned to the Division of  
99 Corrections and Rehabilitation.

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

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

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

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

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

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