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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4037**

(By Delegates Williams, Renner, Perry, Tabb, Long,  
Paxton and Sumner)



Passed March 13, 2004

In Effect Ninety Days from Passage

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## H. B. 4037

(BY DELEGATES WILLIAMS, RENNER, PERRY, TABB,  
LONG, PAXTON AND SUMNER)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §49-5-17 of the code of West Virginia, 1931, as amended, relating to providing certain juvenile justice records to public school officials and limiting disclosure of certain records.

*Be it enacted by the Legislature of West Virginia:*

That §49-5-17 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 5. JUVENILE PROCEEDINGS.

#### §49-5-17. Confidentiality of juvenile records.

- 1 (a) Records of a juvenile proceeding conducted under this
- 2 chapter are not public records and shall not be disclosed to

3 anyone unless disclosure is otherwise authorized by this  
4 section.

5 (b) Notwithstanding the provisions of subsection (a) of this  
6 section, a copy of a juvenile's records shall automatically be  
7 disclosed to certain school officials, subject to the following  
8 terms and conditions:

9 (1) Only the records of certain juveniles shall be disclosed.  
10 These include and are limited to cases in which:

11 (A) The juvenile has been charged with an offense which:

12 (i) Involves violence against another person;

13 (ii) Involves possession of a dangerous or deadly weapon;  
14 or

15 (iii) Involves possession or delivery of a controlled sub-  
16 stance as that term is defined in section one hundred one, article  
17 one, chapter sixty-a of this code; and

18 (B) The juvenile's case has proceeded to a point where one  
19 or more of the following has occurred:

20 (i) A judge, magistrate or referee has determined that there  
21 is probable cause to believe that the juvenile committed the  
22 offense as charged;

23 (ii) A judge, magistrate or referee has placed the juvenile on  
24 probation for the offense;

25 (iii) A judge, magistrate or referee has placed the juvenile  
26 into an improvement period in accordance with section nine of  
27 this article; or

28 (iv) Some other type of disposition has been made of the  
29 case other than dismissal.

30 (2) The circuit court for each judicial circuit in West  
31 Virginia shall designate one person to supervise the disclosure  
32 of juvenile records to certain school officials.

33 (3) If the juvenile attends a West Virginia public school, the  
34 person designated by the circuit court shall automatically  
35 disclose all records of the juvenile's case to the county superin-  
36 tendent of schools in the county in which the juvenile attends  
37 school and to the principal of the school which the juvenile  
38 attends, subject to the following:

39 (A) At a minimum, the records shall disclose the following  
40 information:

41 (i) Copies of the arrest report;

42 (ii) Copies of all investigations;

43 (iii) Copies of any psychological test results and any mental  
44 health records;

45 (iv) Copies of any evaluation reports for probation or  
46 facility placement; and

47 (v) Any other material that would alert the school to  
48 potential danger that the juvenile may pose to himself, herself  
49 or others;

50 (B) The disclosure of the juvenile's psychological test  
51 results and any mental health records shall only be made in  
52 accordance with subdivision (14) of this subsection;

53 (C) If the disclosure of any record to be automatically  
54 disclosed under this section is restricted in its disclosure by the  
55 Health Insurance Portability and Accountability Act of 1996  
56 and any amendments and regulations under the Act, the person  
57 designated by the circuit court shall provide the superintendent

58 and principal any notice of the existence of the record that is  
59 permissible under the Act and, if applicable, any action that is  
60 required to obtain the record; and

61 (D) When multiple disclosures are required by this subsec-  
62 tion, the person designated by the circuit court is required to  
63 disclose only material in the juvenile record that had not  
64 previously been disclosed to the county superintendent and the  
65 principal of the school which the juvenile attends.

66 (4) If the juvenile attends a private school in West Virginia,  
67 the person designated by the circuit court shall determine the  
68 identity of the highest ranking person at that school, and shall  
69 automatically disclose all records of a juvenile's case to that  
70 person.

71 (5) If the juvenile does not attend school at the time the  
72 juvenile's case is pending, the person designated by the circuit  
73 court shall not transmit the juvenile's records to any school.  
74 However, the person designated by the circuit court shall  
75 transmit the juvenile's records to any school in West Virginia  
76 which the juvenile subsequently attends.

77 (6) The person designated by the circuit court shall not  
78 automatically transmit juvenile records to a school which is not  
79 located in West Virginia. Instead, the person designated by the  
80 circuit court shall contact the out-of-state school, inform it that  
81 juvenile records exist, and make an inquiry regarding whether  
82 the laws of that state permit the disclosure of juvenile records.  
83 If so, the person designated by the circuit court shall consult  
84 with the circuit judge who presided over the case to determine  
85 whether the juvenile records should be disclosed to the out-of-  
86 state school. The circuit judge shall have discretion in determin-  
87 ing whether to disclose the juvenile records, and shall consider  
88 whether the other state's law regarding disclosure provides for  
89 sufficient confidentiality of juvenile records, using this section

90 as a guide. If the circuit judge orders the juvenile records to be  
91 disclosed, they shall be disclosed in accordance with the  
92 provisions of subdivision (7) of this subsection.

93 (7) The person designated by the circuit court shall transmit  
94 the juvenile's records to the appropriate school official under  
95 cover of a letter emphasizing the confidentiality of such records  
96 and directing the official to consult this section of the code. A  
97 copy of this section of the code shall be transmitted with the  
98 juvenile's records and cover letter.

99 (8) Juvenile records must be treated as absolutely confiden-  
100 tial by the school official to whom they are transmitted, and  
101 nothing contained within the juvenile's records shall be noted  
102 on the juvenile's permanent educational record. The juvenile  
103 records are to be maintained in a secure location and are not to  
104 be copied under any circumstances. However, the principal of  
105 a school to whom the records are transmitted shall have the  
106 duty to disclose the contents of those records to any teacher  
107 who teaches a class in which the subject juvenile is enrolled and  
108 to the regular driver of a school bus in which the subject  
109 juvenile is regularly transported to or from school, except that  
110 the disclosure of the juvenile's psychological test results and  
111 any mental health records shall only be made in accordance  
112 with subdivision (14) of this subsection. Furthermore, any  
113 school official to whom the juvenile's records are transmitted  
114 may disclose the contents of such records to any adult within  
115 the school system who, in the discretion of the school official,  
116 has the need to be aware of the contents of those records.

117 (9) If for any reason a juvenile ceases to attend a school  
118 which possesses that juvenile's records, the appropriate official  
119 at that school shall seal the records and return them to the  
120 circuit court which sent them to that school. If the juvenile has  
121 changed schools for any reason, the former school shall inform  
122 the circuit court of the name and location of the new school

123 which the juvenile attends or will be attending. If the new  
124 school is located within West Virginia, the person designated  
125 by the circuit court shall forward the juvenile's records to the  
126 juvenile's new school in the same manner as provided in  
127 subdivision (7) of this subsection. If the new school is not  
128 located within West Virginia, the person designated by the  
129 circuit court shall handle the juvenile records in accordance  
130 with subdivision (6) of this subsection.

131 If the juvenile has been found not guilty of an offense for  
132 which records were previously forwarded to the juvenile's  
133 school on the basis of a finding of probable cause, the circuit  
134 court shall not forward those records to the juvenile's new  
135 school. However, this shall not affect records related to other  
136 prior or future offenses. If the juvenile has graduated or quit  
137 school, or will otherwise not be attending another school, the  
138 circuit court shall retain the juvenile's records and handle them  
139 as otherwise provided in this article.

140 (10) Under no circumstances shall one school transmit a  
141 juvenile's records to another school.

142 (11) Under no circumstances shall juvenile records be  
143 automatically transmitted to a college, university or other post-  
144 secondary school.

145 (12) No one shall suffer any penalty, civil or criminal, for  
146 accidentally or negligently attributing certain juvenile records  
147 to the wrong person. However, such person shall have the  
148 affirmative duty to promptly correct any mistake that he or she  
149 has made in disclosing juvenile records when the mistake is  
150 brought to his or her attention. A person who intentionally  
151 attributes false information to a certain person shall be sub-  
152 jected to both criminal and civil penalties, in accordance with  
153 subsection (e) of this section.

154 (13) If a judge, magistrate or referee has determined that  
155 there is probable cause to believe that a juvenile has committed  
156 an offense but there has been no final adjudication of the  
157 charge, the records which are transmitted by the circuit court  
158 shall be accompanied by a notice which clearly states in bold  
159 print that there has been no determination of delinquency and  
160 that our legal system requires a presumption of innocence.

161 (14) The county superintendent shall designate the school  
162 psychologist or psychologists to receive the juvenile's psycho-  
163 logical test results and any mental health records. The psycholo-  
164 gist designated shall review the juvenile's psychological test  
165 results and any mental health records, and, in the psychologist's  
166 professional judgement, may disclose to the principal of the  
167 school that the juvenile attends and other school employees  
168 who would have a need to know the psychological test results,  
169 mental health records and any behavior that may trigger  
170 violence or other disruptive behavior by the juvenile. Other  
171 school employees includes, but is not limited to, any teacher  
172 who teaches a class in which the subject juvenile is enrolled and  
173 the regular driver of a school bus in which the subject juvenile  
174 is regularly transported to or from school.

175 (c) Notwithstanding the provisions of subsection (a) of this  
176 section, juvenile records may be disclosed, subject to the  
177 following terms and conditions:

178 (1) If a juvenile case is transferred to the criminal jurisdic-  
179 tion of the circuit court pursuant to the provisions of subsection  
180 (c) or (d), section ten of this article, the juvenile records shall be  
181 open to public inspection.

182 (2) If a juvenile case is transferred to the criminal jurisdic-  
183 tion of the circuit court pursuant to the provisions of subsection  
184 (e), (f) or (g), section ten of this article, the juvenile records  
185 shall be open to public inspection only if the juvenile fails to



186 file a timely appeal of the transfer order, or the supreme court  
187 of appeals refuses to hear or denies an appeal which has been  
188 timely filed.

189 (3) If a juvenile is fourteen years of age or older and a court  
190 has determined there is a probable cause to believe the juvenile  
191 committed an offense set forth in subsection (g), section ten of  
192 this article, but the case is not transferred to criminal jurisdic-  
193 tion, the juvenile records shall be open to public inspection  
194 pending trial only if the juvenile is released on bond and no  
195 longer detained or adjudicated delinquent of the offense.

196 (4) If a juvenile is younger than fourteen years of age and  
197 a court has determined there is probable cause to believe that  
198 the juvenile committed the crime of murder under section one,  
199 two or three, article two, chapter sixty-one of this code, or the  
200 crime of sexual assault in the first degree under section three,  
201 article eight-b of said chapter, but the case is not transferred to  
202 criminal jurisdiction, the juvenile records shall be open to  
203 public inspection pending trial only if the juvenile is released  
204 on bond and no longer detained or adjudicated delinquent of the  
205 offense.

206 (5) Upon a written petition and pursuant to a written order,  
207 the circuit court may permit disclosure of juvenile records to:

208 (A) A court which has juvenile jurisdiction and has the  
209 juvenile before it in a juvenile proceeding;

210 (B) A court exercising criminal jurisdiction over the  
211 juvenile which requests such records for the purpose of a  
212 presentence report or disposition proceeding;

213 (C) The juvenile, the juvenile's parents or legal guardian,  
214 or the juvenile's counsel;

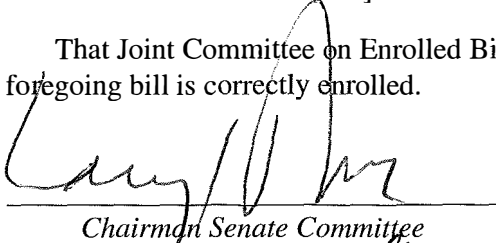
215 (D) The officials of a public institution to which the  
216 juvenile is committed if they require such records for transfer,  
217 parole or discharge; or

218 (E) A person who is conducting research. However,  
219 juvenile records may be disclosed for research purposes only  
220 upon the condition that information which would identify the  
221 subject juvenile or the juvenile's family shall not be disclosed.

222 (d) Any records open to public inspection pursuant to the  
223 provisions of this section are subject to the same requirements  
224 governing the disclosure of adult criminal records.

225 (e) Any person who willfully violates this section is guilty  
226 of a misdemeanor and, upon conviction thereof, shall be fined  
227 not more than one thousand dollars, or confined in the county  
228 or regional jail for not more than six months, or both fined and  
229 confined, and shall be liable for damages in the amount of three  
230 hundred dollars or actual damages, whichever is greater.


That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

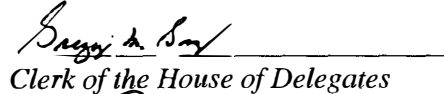
  
Chairman Senate Committee

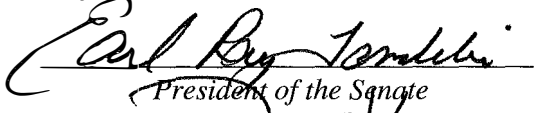
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 10th day of April, 2004.

  
Governor

PRESENTED TO THE  
GOVERNOR

DATE 3/31/04  
TIME 10:00 am