

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 504

BY SENATORS ASHLEY, LAIRD, MAYNARD, MILLER,
ROMANO, WALTERS AND PLYMALE, *original sponsors*

[Passed March 12, 2016; in effect 90 days from
passage]

1 AN ACT to amend and reenact §49-5-101 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §62-6B-2 of said code; and to amend said code by adding thereto a
3 new section, designated §62-6B-6, all relating to confidentiality of records; providing that
4 a recorded interview of a minor in a criminal or abuse or neglect case is generally
5 confidential and exempt from disclosure; defining terms, including “interviewed child” and
6 “recorded interview”; providing that recorded interviews of children in criminal and
7 administrative proceedings are confidential and subject to disclosure only pursuant to a
8 court order; providing that all written documentation related to the recorded interviews of
9 children in criminal and administrative proceedings are confidential; providing for certain
10 individuals to have access to the recorded interview of a child prior to the commencement
11 of formal proceedings and providing for limitations and conditions for certain individuals to
12 have such access; requesting Supreme Court of Appeals promulgate rules regulating the
13 publication and duplication of recorded interviews in the courts of this state, including use,
14 duplication and publication by counsel, and to include in any such rule limitations upon the
15 publication, duplication, distribution or use of the recorded statements of a child; creating
16 the criminal offense of knowingly and willfully duplicating, or publishing a recorded
17 interview in violation of the terms of a court order or the general confidentiality provisions;
18 and establishing penalties therefor.

Be it enacted by the Legislature of West Virginia:

1 That §49-5-101 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §62-6B-2 of said code be amended and reenacted; and that said code be
3 amended by adding thereto a new section, designated §62-6B-6, all to read as follows:

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. RECORDKEEPING 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, the Department of Health and Human Resources, a child agency or facility, court or
4 law-enforcement agency are confidential and shall not be released or disclosed to anyone,
5 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 may provide access to and the confidential use of
54 a treatment plan, court records or other records of a juvenile to an agency in another state which:

55 (A) Performs the same functions in that state that are performed by the Division of Juvenile
56 Services in this state;

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

58 (C) Has legal custody of the juvenile.

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

61 (3) The Division of Juvenile Services is authorized to enter into reciprocal agreements with
62 other states and to propose rules for legislative approval in accordance with article three, chapter
63 twenty-nine-a of this code to implement this subsection.

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

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

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS AND TESTIMONY OF CHILD WITNESS.

§62-6B-2. Definitions.

1 For the purposes of this article, the words or terms defined in this section, and any variation
2 of those words or terms required by the context, have the meanings ascribed to them in this
3 section. These definitions are applicable unless a different meaning clearly appears from the
4 context.

5 (1) "Child witness" means a person under the age of sixteen years of age who is or will be
6 called to testify in a criminal matter concerning an alleged violation of the provisions of sections
7 three, four, five and seven, article eight-b, chapter sixty-one of this code in which the child is the
8 alleged victim.

9 (2) "Live, closed-circuit television" means a simultaneous transmission, by closed-circuit
10 television or other electronic means, between the courtroom and the testimonial room.

11 (3) "Operator" means the individual authorized by the court to operate the closed-circuit
12 television equipment used in accordance with the provisions of this article.

13 (4) "Testimonial room" means a room within the courthouse other than the courtroom from
14 which the testimony of a child witness or the defendant is transmitted to the courtroom by means
15 of live, closed-circuit television.

16 (5) "Interviewed child" shall mean any person under the age of eighteen who has been
17 interviewed by means of any type of recording equipment in connection with alleged criminal
18 behavior or allegations of abuse or neglect of any child under the age of eighteen.

19 (6) "Recorded interview" means any electronic recording of the interview, and any
20 transcript thereof, of an interviewed child conducted by: (1) An employee or representative of a
21 child advocacy center as that term is defined in section one hundred one, article three, chapter
22 forty-nine of this code; (2) any psychologist, psychiatrist, physician, nurse, social worker or other
23 person appointed by the court to interview the interviewed child as provided in subsection (c),
24 section three of this article; or (3) a child protective services worker, law-enforcement officer,
25 prosecuting attorney or any representative of his or her office, or any other person investigating
26 allegations of criminal behavior or behavior alleged to constitute abuse or neglect of a child.

§62-6B-6. Confidentiality of recorded interviews of children.

1 (a) Except as provided by the provisions of this article, recorded interviews of an
2 interviewed child in any judicial or administrative proceeding shall not be published or duplicated
3 except pursuant to the terms of an order of a court of competent jurisdiction. All written
4 documentation in any form that is related to the recorded interview shall also be deemed
5 confidential.

6 (b) Prior to the commencement of formal proceedings as contemplated in subsection (a)
7 of this section, the persons or agencies listed in subdivision (6), section two of this article shall be
8 entitled to access to or copies of the recorded interview of an interviewed child: *Provided, That*
9 such persons or agencies may provide access to the recorded interview of a child to a legal
10 parent, guardian or custodian of such child when: (1) Such parent, guardian or custodian is not
11 alleged to have been involved or engaged in conduct that may give rise to a judicial or
12 administrative proceeding; and (2) it would not undermine or frustrate an ongoing investigation:
13 *Provided, however, That* prior to the commencement of formal proceedings only psychologists,
14 psychiatrists, physicians, nurses and social workers who are providing services to the interviewed
15 child may be afforded reasonable access to the recorded interview.

16 (c) The Supreme Court of Appeals is requested to promulgate a rule or rules regulating in
17 the courts of this state the publication and duplication of recorded interviews, including use,
18 duplication and publication by counsel, and to include in any such rule limitations upon the
19 publication, duplication, distribution or use of the recorded statements of a child.

20 (d) Any person who knowingly and willfully duplicates or publishes a recorded interview in
21 violation of the terms of an order entered by a court of competent jurisdiction or in violation of the
22 provisions of subsection (b) of this section shall be guilty of a misdemeanor and, upon conviction,
23 shall be confined in jail for not less than ten days nor more than one year or fined not less than
24 \$2,000 nor more than \$10,000, or both fined and confined.