

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

House Bill 4308

BY DELEGATES CAPITO, ZUKOFF, FLUHARTY, GARCIA,

KIMBLE, LOVEJOY AND PUSHKIN

[Passed February 21, 2022; in effect ninety days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §14-2A-11a; to amend and reenact §14-2A-14 of said code; and to amend and
3 reenact §49-5-101 of said code, all relating generally to confidentiality of juvenile records
4 and exceptions thereto; declaring that records in the possession of the Crime Victim
5 Compensation Fund regarding juveniles who are the subject of an abuse or neglect
6 petition are confidential; expanding the class of persons who may apply to the Crime
7 Victim's Fund on behalf of a child who is the subject of a civil abuse and neglect petition;
8 specifying that official records relating to a child or juvenile may be disclosed for evaluation
9 of a Crime Victims' Compensation Fund application; including the Juvenile Justice
10 Commission and its designees acting in the courses of their official duties to the list of
11 persons and entities granted access to confidential juvenile records; granting the West
12 Virginia Crime Victims Compensation Fund and its designees access to certain
13 information related to child abuse or neglect proceedings; granting a current or former
14 employee of the Division of Corrections and Rehabilitation access to relevant juvenile
15 records for purposes of pursuing a grievance; permitting the release of such records only
16 after a hearing to determine relevance, held before the Public Employees Grievance
17 Board; providing for the sealing of such relevant records from public view and the redaction
18 of any identifying information related to the juvenile; placing certain limitations on the
19 grieving party's use of such records; permitting a grieving party's attorney or
20 representative access to such records; requiring records be returned following conclusion
21 of grievance procedure; requiring a court order for any further use of such records outside
22 of the grievance proceeding; requiring that such court orders limit disclosure to the
23 purposes of the proceeding; and clarifying that nothing in the section may be construed to
24 abrogate the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-11a. Application when the victim is the subject of a civil abuse or neglect petition; confidentiality of records.

1 (a) An application for benefits on behalf of a minor child who is the subject of a civil abuse
2 and neglect petition may be filed by a foster parent, legal guardian of the minor child, court
3 appointed guardian ad litem, or any person or entity having legal custody of the minor child,
4 including the agency which filed the civil abuse and neglect petition.

5 (b) All crime victims' compensation fund records and proceedings related to a claim filed
6 on behalf of a minor child who is the subject of a civil abuse and neglect petition are confidential
7 and may not be disclosed to any person who is not a necessary participant in the proceedings.
8 Information, details, and identities of parties in the claim shall not be published, except in the form
9 of statistical reporting, identified only by claim number, as necessary to satisfy the requirements
10 of federal and state law.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum award.

1 (a) Except as provided in §14-2A-10(b) of this code, the commissioner may not approve
2 an award of compensation to a claimant who did not file his or her application for an award of
3 compensation within two years after the date of the occurrence of the criminally injurious conduct
4 that caused the injury or death for which he or she is seeking an award of compensation.

5 (b) The commissioner may not approve an award of compensation if the criminally
6 injurious conduct upon which the claim is based was not reported to a law-enforcement officer or
7 agency or, in the case of sexual offense, the victim did not undergo a forensic medical
8 examination, within 96 hours after the occurrence of the conduct, unless it is determined that good
9 cause existed for the failure to report the conduct or undergo a forensic medical examination
10 within the 96-hour period: *Provided*, That reporting to a law-enforcement officer or agency or a

11 forensic medical examination is not required if the victim is a juvenile in order for a commissioner
12 to approve an award of compensation: *Provided, however,* That the filing of a civil abuse and
13 neglect petition in a circuit court satisfies the reporting requirement, thereby allowing the minor
14 child who is the subject of the petition to file an application for benefits, with the claims process to
15 proceed in accordance with this code.

16 (c) The commissioner may not approve an award of compensation to a claimant who is
17 the offender or an accomplice of the offender who committed the criminally injurious conduct, nor
18 to any claimant if the award would unjustly benefit the offender or his or her accomplice.

19 (d) A commissioner, upon a finding that the claimant or victim has not fully cooperated
20 with appropriate law-enforcement agencies or the claim investigator, may deny a claim, reduce
21 an award of compensation, or reconsider a claim already approved.

22 (e) A commissioner may not approve an award of compensation if the injury occurred
23 while the victim was confined in any state, county, or regional jail, prison, private prison, or
24 correctional facility.

25 (f) After reaching a decision to approve an award of compensation, but prior to announcing
26 the approval, the commissioner shall require the claimant to submit current information as to
27 collateral sources on forms prescribed by the Clerk of the West Virginia Legislative Claims
28 Commission. The commissioner shall reduce an award of compensation or deny a claim for an
29 award of compensation that is otherwise payable to a claimant to the extent that the economic
30 loss upon which the claim is based is or will be recouped from other persons, including collateral
31 sources, or if the reduction or denial is determined to be reasonable because of the contributory
32 misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced
33 or a claim is denied because of the expected recoupment of all or part of the economic loss of the
34 claimant from a collateral source, the amount of the award or the denial of the claim shall be
35 conditioned upon the claimant's economic loss being recouped by the collateral source: *Provided,*
36 That if it is thereafter determined that the claimant will not receive all or part of the expected

37 recoupment, the claim shall be reopened and an award shall be approved in an amount equal to
38 the amount of expected recoupment that it is determined the claimant will not receive from the
39 collateral source, subject to the limitation set forth in subsection (g) of this section.

40 (g)(1) Except in the case of death, or as provided in subdivision (2) of this subsection,
41 compensation payable to a victim and to all other claimants sustaining economic loss because of
42 injury to that victim may not exceed \$35,000 in the aggregate. Compensation payable to all
43 claimants because of the death of the victim may not exceed \$50,000 in the aggregate.

44 (2) In the event the victim's personal injuries are so severe as to leave the victim with a
45 disability, as defined in Section 223 of the Social Security Act, as amended, as codified in 42 U.
46 S. C. §423, the commission may award an additional amount, not to exceed \$100,000, for special
47 needs attributable to the injury.

48 (h) If an award of compensation of \$5,000 or more is made to a minor, a guardian shall be
49 appointed pursuant to the provisions of §44-10-1 *et seq.* of this code to manage the minor's estate.

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 Health and Human Resources, a child agency or facility, or court
4 or law-enforcement agency, are confidential and may 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;
- 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
21 may 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) If there is a child fatality or near fatality due to child abuse and neglect, information
38 relating to a fatality or near fatality shall be made public by the Department of Health and Human
39 Resources and provided to the entities described in subsection (c) of this section, all under the
40 circumstances described in that subsection: *Provided*, That information released by the
41 Department of Health and Human Resources pursuant to this subsection may not include the
42 identity of a person reporting or making a complaint of child abuse or neglect. For purposes of
43 this subsection, “near fatality” means any medical condition of the child which is certified by the
44 attending physician to be life threatening.

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

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

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

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

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

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

64 (C) Has legal custody of the juvenile.

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

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

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

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

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

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

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

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

84 (l) If production of confidential records or information is disclosed to a grievant, his or her
85 counsel or representative, pursuant to subsection (k) of this section:

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

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

89 (3) Records or other information released to a grievant or his or her counsel or
90 representative pursuant to subsection (k) of this section may only be used for purposes of his or
91 her grievance proceeding and may not be disclosed, published, copied, or distributed for any
92 other purpose, and upon the conclusion of the grievance procedure, returned to the Division of
93 Corrections and Rehabilitation.

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

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

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor