WEST virginia legislature

2022 regular session

Committee Substitute

for

Senate Bill 472

By Senators Trump and Weld

[Originating in the Committee on the Judiciary; reported on February 3, 2022]

A BILL to amend and reenact §49-5-101 of the Code of West Virginia, as amended, relating to including the Juvenile Justice Commission and its designees acting in the courses of their official duties to the list of persons and entities granted access to confidential records; granting a current or former employee of the Division of Corrections and Rehabilitation access to relevant juvenile records for purposes of pursuing a grievance; permitting the release of such records only after a hearing to determine relevancy by the Public Employees Grievance Board; providing for the sealing of such relevant records from public view and the redaction of any identifying information related to the juvenile; placing certain limitations on the grieving party’s use of such records; permitting a grieving party’s attorney or representative access to such records; requiring a court order for any further use of such records outside of the grievance proceeding; requiring that such court orders limit disclosure to the purposes of the proceeding; and clarifying that nothing in the section may be construed to abrogate the Freedom of Information Act.

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.

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile which are maintained by the Division of ~~Juvenile Services~~ Corrections and Rehabilitation, the Department of Health and Human Resources, a child agency or facility, or court or law-enforcement agency, are confidential and ~~shall~~ may not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records and records disclosing the identity of a person making a complaint of child abuse or neglect, may be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated; or

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

(D) The Juvenile Justice Commission and its’ designees acting in the course of their official duties;

(3) With the written consent of the child or of someone authorized to act on the child’s behalf; ~~or~~ and

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

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

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

(2) The child fatality review team;

(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams; or

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

(d) I~~n the event of~~ If there is a child fatality or near fatality due to child abuse and neglect, information relating to a fatality or near fatality shall be made public by the Department of Health and Human Resources and provided to the entities described in subsection (c) of this section, all under the circumstances described in that subsection ~~However,~~ :*Provided*, That information released by the Department of Health and Human Resources pursuant to this subsection may not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, “near fatality” means any medical condition of the child which is certified by the attending physician to be life threatening.

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

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

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

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

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

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

(C) Has legal custody of the juvenile.

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

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

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

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

(j) Notwithstanding the provision of subsection (a) of this section, records declared to be confidential by the provisions of subsection (a) of this section may be published and disclosed for use in an employee grievance if such is done in compliance with subsections (k), (l), and (m) of this section.

(k) No records or information declared confidential by the provisions of this section may be released for use in a grievance proceeding except:

(1) Upon written motion of a party; and

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

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

1) Written records or information must be redacted of all identifying information of any juvenile which is not relevant to the resolution of the grievance;

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

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

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

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