

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2473

By Delegate Fast

[Introduced January 11, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §49-5-101 of the Code of West Virginia, 1931, as amended, relating
 2 to permitting a current or former employee of the Division of Corrections and Rehabilitation
 3 access to relevant juvenile records for purposes of pursuing a grievance; permitting the
 4 release of such records only after a hearing to determine relevancy by the Public
 5 Employees Grievance Board; providing for the sealing of such relevant records from public
 6 view and the redaction of any identifying information related to the juvenile; placing certain
 7 limitations on the grieving party's use of such records; permitting a grieving party's
 8 representative access to such records; requiring a court order for any further use of such
 9 records outside of the grievance proceeding; subjecting the grievant and grievance
 10 representative to criminal penalties for violations of the section; and making technical
 11 corrections.

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 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 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) 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 this
43 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.* of
69 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 provision 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 an employee of the Division of Corrections and Rehabilitation who has properly filed a grievance
80 pursuant to the provisions of §6C-2-1 *et seq.* of this code may be provided with such records as
81 determined by the Public Employees Grievance Board, after a hearing on the record to determine
82 relevancy to the proceeding, and such records may be produced pursuant to a written discovery
83 request or introduced as evidence at a hearing and admitted under seal and permanently
84 protected from public view: *Provided*, That any written records disclosed pursuant to the
85 provisions of this subsection shall be redacted of all identifying information of any juvenile not
86 relevant to the resolution of the grievance: *Provided, however*, That, if relevant to the grievance
87 proceeding, video and audio records may be produced without redaction and shall be maintained
88 in a manner provided by this subsection: *Provided further*, That the current or former employee
89 receiving the records shall (1) use such records solely for the legitimate purposes of evidence and
90 not for any improper or unauthorized purpose; (2) not reproduce the record or further disseminate

91 the record to any person not authorized to receive it; and (3) immediately return all disclosed
92 records to the Division of Corrections and Rehabilitation for destruction following the conclusion of
93 any grievance proceedings: *And provided further*, That the employee receiving the records may
94 allow his or her grievance representative to view the records and a grievance representative shall
95 also be subject to the provisions of this section. Use of the records outside of the grievance
96 proceedings set forth in the subsection shall require an order of a court of competent jurisdiction as
97 to the relevance of such records to the proceeding and the issuance of an appropriate protective
98 order. Any violation of the provisions of this subsection by the aggrieved employee or grievance
99 representative shall be treated in accordance with subsection (f) of this section.

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

102 ~~(1) Upon written motion of a party; and~~

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

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

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

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

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

115 ~~(m) If a grievant or the Division of Corrections and Rehabilitation seek judicial review of a~~
116 ~~decision of the Public Employee's Grievance Board, the relevant confidential records disclosed~~

117 ~~and used in the grievance proceeding may be used in the appeal proceeding upon entry of an~~
118 ~~order by the circuit court, the order shall contain a provision limiting disclosure or publication of the~~
119 ~~records or information to purposes necessary to the proceeding and prohibiting unauthorized use~~
120 ~~and reproduction.~~

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

NOTE: The purpose of this bill is to permit the limited use of juvenile records in grievance proceedings regarding employees of the Division of Corrections and Rehabilitation when such records prove relevant. The bill permits the release of such records only after a hearing to determine relevancy by the Public Employees Grievance Board. The bill provides for the sealing of such relevant records from public view and the redaction of any identifying information related to the juvenile. The bill places certain limitations on the grieving party's use of such records. The bill permits a grieving party's representative access to such records. The bill requires a court order for any further use of such records outside of the grievance proceeding. The bill subjects the grievant and grievance representative to criminal penalties for violations of the section. Finally, the bill makes technical corrections.

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