

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Senate Bill 495**

By Senators Trump, Takubo, Clements, Woelfel,

Deeds, and Rucker

[Passed March 11, 2023; in effect from passage]

1 AN ACT to amend and reenact §15A-4-8a of the Code of West Virginia, 1931, as amended,  
2 relating generally to correctional institutions and juvenile facilities; deeming certain video  
3 and audio recordings records and reports to be confidential; creating exceptions to  
4 confidentiality; requiring court or administrative tribunal orders directing disclosure to  
5 contain a provision limiting disclosure to the purposes necessary to the proceeding and  
6 prohibiting unauthorized use and publication; requiring the Commissioner of the Division of  
7 Corrections and Rehabilitation to permit the viewing of certain records to licensed  
8 attorneys under certain conditions; and defining terms.

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

**ARTICLE 4. CORRECTIONS MANAGEMENT.**

**§15A-4-8a. Facility video and security records confidential; exceptions.**

1 (a) The contents of all records necessary for the safe and secure management of inmates  
2 and residents committed to state correctional and juvenile facilities are confidential and may only  
3 be disclosed or released:

- 4 (1) Pursuant to this section;
- 5 (2) As required by the provisions of §29B-1-1 *et seq.* of this code;
- 6 (3) In accordance with the discovery provisions of the West Virginia Rules of Civil  
7 Procedure or the West Virginia Rules of Criminal Procedure; or
- 8 (4) In accordance with the provisions of §49-5-101 of this code.

9 (b) As used in this section, "records necessary for the safe and secure management of  
10 inmates and residents" means:

- 11 (1) Video and audio recordings produced in a correctional or juvenile facility;
- 12 (2) Incident reports and attachments thereto;
- 13 (3) Investigation reports and any attachments thereto, including, but not limited to, witness  
14 statements; and
- 15 (4) Any document or recording generated within a facility containing information which

16 would reasonably place the safety of an employee, inmate, or resident in jeopardy.

17 (c) Records protected pursuant to the provisions of this section may be disclosed:

18 (1) To the Secretary of the Department of Homeland Security, his or her designees, and the  
19 commissioner or his or her designees for official use;

20 (2) To law enforcement when release is determined by the commissioner or his or her  
21 designees to be necessary for the investigation, prevention, or prosecution of a crime or crimes;

22 (3) To the Juvenile Justice Commission and its designees acting in the course of their  
23 official duties; and

24 (4) Pursuant to a lawful order of a court of record or an administrative tribunal for use in a  
25 civil, criminal, or administrative matter: *Provided*, That the order shall contain a provision limiting  
26 disclosure or publication of the records to purposes necessary to the proceeding and prohibiting its  
27 unauthorized use and reproduction.

28 (5) The commissioner shall authorize an attorney, licensed to practice law in this state and  
29 who is representing a person with a potential claim for personal injury or a violation of the United  
30 States Constitution or West Virginia Constitution allegedly caused by the division, to view facility  
31 video, incident reports, or investigation reports related to the safe and secure management of  
32 inmates and residents for purposes of determining the validity of a claim against the division:  
33 *Provided*, That such video, incident reports, or investigation reports related to the safe and secure  
34 management of inmates and residents shall not be released to the licensed attorney prior to  
35 institution of a suit or petition for pre-suit discovery in the appropriate forum and after the entry of  
36 an appropriate protective order prohibiting the misuse and reproduction of disclosed records.

37 (d) The commissioner shall authorize an attorney, licensed to practice in this state and who  
38 is representing a person related by consanguinity or affinity to an inmate or resident who has  
39 suffered an alleged injury or death while in the custody of the division to view facility video, incident  
40 reports, or investigation reports related to the safe and secure management of inmates and  
41 residents under the conditions set forth in subdivision (5), subsection (c) of this section.

42           (e) The confidentiality provisions of this section extend to any person receiving such  
43 records and may not be used for any unauthorized purpose except upon order of a court of record  
44 or administrative tribunal.