WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 495

By Senators Trump, Caputo, Takubo, Clements, Woelfel, Deeds, and Rucker

[Introduced January 27, 2023; referred to the Committee on the Judiciary]
A BILL to amend and reenact §15A-4-8a of the Code of West Virginia, 1931, as amended, relating
generally to correctional institutions and juvenile facilities; deeming certain video and audio
recordings records and reports to be confidential; creating exceptions to confidentiality;
requiring court orders directly disclosure to contain a provision limiting disclosure to the
purposes necessary to the proceeding and prohibiting unauthorized use and publication;
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.

(a) The contents of any correctional or juvenile facility video, incident report, or
investigation report related to the safe and secure management of inmates and residents may be
disclosed or released to the commissioner's agents, representatives, and designees, but such
records are otherwise confidential and not subject to public disclosure or release except as set
forth in this section.

(b) Notwithstanding any provision of this code to the contrary, the contents of any
correctional or juvenile facility video, incident report, or investigation report related to the safe and
secure management of inmates and residents may be disclosed or released to an appropriate law-
enforcement agency, when disclosure or release is necessary for the investigation, prevention, or
prosecution of a crime or to safeguard the orderly operation of the correctional institution:
Provided, That, with respect to records relating to juvenile residents, the law enforcement agency
in receipt of any such records shall treat the records as confidential pursuant to the provisions set
forth in §49-5-101(a) of this code.

(c) Disclosure or release may also be made in civil or administrative proceedings pursuant
to an order of a court or an administrative tribunal with the entry of an appropriate protective order
prohibiting the misuse and reproduction of disclosed or released records: Provided, That the
disclosure or release of records from a juvenile facility required for an employee grievance shall be
made strictly in accordance with the provisions of §49-5-101 of this code.

(d) The commissioner may authorize an attorney, licensed before the bar of this state and who is representing a person with a potential claim for personal injury or a violation of the United States Constitution or West Virginia Constitution allegedly caused by the division, to view facility video, incident reports, or investigation reports related to the safe and secure management of inmates and residents for purposes of determining the validity of a claim against the division, but such video, incident reports, or investigation reports related to the safe and secure management of inmates and residents shall not be released to the licensed attorney prior to institution of a suit or petition for pre-suit discovery in the appropriate forum and after the entry of an appropriate protective order prohibiting the misuse and reproduction of disclosed records.

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

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

(1) Pursuant to this section;

(2) As required by the provision of §29B-1-1 et seq. of this code; or

(3) In accordance with the discovery provisions of the WV Rules of Civil Procedure or the WV Rules of Criminal Procedure.

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

(1) Video and audio recordings produced in a correctional or juvenile facility;

(2) Incident reports and attachments thereto;

(3) Investigation reports and any attachments thereto, including, but not limited to, witness statements; and

(4) Any document or recording generated within a facility containing information which
would reasonably place the safety of an employee, inmate, or resident in jeopardy.

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

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

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

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

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

NOTE: The purpose of this bill is to deem correctional institutions and juvenile facilities video and audio recordings records and reports to be confidential; creating exceptions to confidentiality; requiring court orders directly disclosure to contain a provision limiting disclosure to the purposes necessary to the proceeding; prohibiting unauthorized use and publication; and defining terms.

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