

# WEST VIRGINIA CODE: §15A-4-8A

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

(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 provisions of §29B-1-1 *et seq.* of this code;
- (3) In accordance with the discovery provisions of the West Virginia Rules of Civil Procedure or the West Virginia Rules of Criminal Procedure; or
- (4) In accordance with the provisions of §49-5-101 of this code.

(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 designees 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 or an administrative tribunal 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.

(5) The commissioner shall authorize an attorney, licensed to practice law in 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: *Provided*, That 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.

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

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