WEST VIRGINIA CODE: §49-5-101

§49-5-101. Confidentiality of records; non-release 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 Corrections and Rehabilitation, the Department of Human Services, a child agency or facility, or court or law-enforcement agency, are confidential and 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;

(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; and

(4) Pursuant to an order of a court of record: *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;

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(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; and

(6) The West Virginia Crime Victims Compensation Fund and its designees acting in the course of their official duties.

(d) Information related to proceedings involving child abuse or neglect, or both, shall be made available, upon request, to the Foster Care Ombudsman, or his or her designee, with the exception of information related to the identity of the person making a referral or suspected abuse or neglect. Only in cases involving near fatalities or fatalities of a child in the foster care system, shall the information related to the identity of the person who reported the suspected abuse or neglect be made available to the Foster Care Ombudsman: *Provided*, That such request is made in the course of their official duties pursuant to §16B-16-1 *et seq*. of this code.

(e) 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 Human Services and provided to the entities described in subsection (c) of this section and to the Critical Incident Review Team as established in §61-12B-1 *et seq*. of this code: *Provided*, That information released by the Department of Human Services pursuant to this subsection may not include the identity of a person reporting or making a complaint of child abuse or neglect except when such information and records are released to the Foster Care Ombudsman or his or her designee acting in the course of their official duties related to a near fatality or fatality of a child with in the foster care system. Only in those circumstances shall the Department of Human Services include the identity of a person reporting or making a complaint of child abuse or neglect may be included: *Provided, however*, That the Foster Care Ombudsman or his or her designee is acting in the course of their official duties pursuant to §16B-16-1 *et seq*. of this code. 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.

(f) 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 §49-5-103 of this code.

(g) Any person who willfully violates 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

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section is also liable for damages in the amount of $300, or actual damages, whichever is greater.

(h) 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;

(i)(1) Notwithstanding the provisions of this section or any other provision of this code to the contrary, the Division of 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 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 Corrections and Rehabilitation may enter into reciprocal agreements with other states and propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code to implement this subsection; and

(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.

(j) The records subject to disclosure pursuant to subsection (b) of this section 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 §62-6B-6 of this code.

(k) Notwithstanding the provisions of subsection (a) of this section, records in the possession of the Division of Corrections and Rehabilitation 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 the disclosure is done in compliance with subsections (l), (m), and (n) of this section.

(l) Records or information declared confidential by the provisions of this section may not 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

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hearing as to the relevance of the record or information.

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

(1) The division shall ensure that written records or information is 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; and

(3) Records or other information released to a grievant or his or her counsel or representative pursuant to subsection (l) 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.

(n) If 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 by the circuit court, and the 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.

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

(p) When requested, a child-placing agency or a residential childcare and treatment facility shall disclose otherwise confidential information to other child-placing agencies or residential childcare and treatment facilities when making referrals or providing services on behalf of the child. This information shall be maintained in the same manner as provided in this code.

(q) The department shall provide electronic access to information required to perform an adoption to child-placing agencies as necessary to complete the adoption.

(r) A child-placing agency completing adoption as a contractor on behalf of the department shall have access to secure records from vital statistics and other pertinent record holders.

(s) The Bureau for Social Services shall provide to the managed care organization, the child-placing agency, and the person having temporary custody of the child, the medical records of the child that are necessary for the care of treatment of the child.

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