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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2005

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**ENROLLED**

SENATE BILL NO. 585

(By Senator Kessler, et al )

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PASSED April 9, 2005

In Effect 90 days from Passage

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**Senate Bill No. 585**

(BY SENATORS KESSLER, DEMPSEY, FOSTER, HUNTER, JENKINS,  
MINARD, OLIVERIO, WHITE, BARNES, CARUTH, DEEM, HARRISON,  
LANHAM, MCKENZIE AND WEEKS)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §49-5-17 of the Code of West Virginia, 1931, as amended, relating to juvenile proceedings and confidentiality of juvenile records; and permitting disclosure of same under specified circumstances.

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

That §49-5-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§49-5-17. Confidentiality of juvenile records.**

1 (a) Records of a juvenile proceeding conducted under  
2 this chapter are not public records and shall not be  
3 disclosed to anyone unless disclosure is otherwise autho-  
4 rized by this section.

5 (b) Notwithstanding the provisions of subsection (a) of  
6 this section, a copy of a juvenile's records shall automati-

7 cally be disclosed to certain school officials, subject to the  
8 following terms and conditions:

9 (1) Only the records of certain juveniles shall be dis-  
10 closed. These include, and are limited to, cases in which:

11 (A) The juvenile has been charged with an offense which:

12 (i) Involves violence against another person;

13 (ii) Involves possession of a dangerous or deadly weapon;  
14 or

15 (iii) Involves possession or delivery of a controlled  
16 substance as that term is defined in section one hundred  
17 one, article one, chapter sixty-a of this code; and

18 (B) The juvenile's case has proceeded to a point where  
19 one or more of the following has occurred:

20 (i) A judge, magistrate or referee has determined that  
21 there is probable cause to believe that the juvenile com-  
22 mitted the offense as charged;

23 (ii) A judge, magistrate or referee has placed the juvenile  
24 on probation for the offense;

25 (iii) A judge, magistrate or referee has placed the juve-  
26 nile into an improvement period in accordance with  
27 section nine of this article; or

28 (iv) Some other type of disposition has been made of the  
29 case other than dismissal.

30 (2) The circuit court for each judicial circuit in West  
31 Virginia shall designate one person to supervise the  
32 disclosure of juvenile records to certain school officials.

33 (3) If the juvenile attends a West Virginia public school,  
34 the person designated by the circuit court shall automati-  
35 cally disclose all records of the juvenile's case to the  
36 county superintendent of schools in the county in which

37 the juvenile attends school and to the principal of the  
38 school which the juvenile attends, subject to the following:

39 (A) At a minimum, the records shall disclose the follow-  
40 ing information:

41 (i) Copies of the arrest report;

42 (ii) Copies of all investigations;

43 (iii) Copies of any psychological test results and any  
44 mental health records;

45 (iv) Copies of any evaluation reports for probation or  
46 facility placement; and

47 (v) Any other material that would alert the school to  
48 potential danger that the juvenile may pose to himself,  
49 herself or others;

50 (B) The disclosure of the juvenile's psychological test  
51 results and any mental health records shall only be made  
52 in accordance with subdivision (14) of this subsection;

53 (C) If the disclosure of any record to be automatically  
54 disclosed under this section is restricted in its disclosure  
55 by the Health Insurance Portability and Accountability  
56 Act of 1996 and any amendments and regulations under  
57 the Act, the person designated by the circuit court shall  
58 provide the superintendent and principal any notice of the  
59 existence of the record that is permissible under the Act  
60 and, if applicable, any action that is required to obtain the  
61 record; and

62 (D) When multiple disclosures are required by this  
63 subsection, the person designated by the circuit court is  
64 required to disclose only material in the juvenile record  
65 that had not previously been disclosed to the county  
66 superintendent and the principal of the school which the  
67 juvenile attends.

68 (4) If the juvenile attends a private school in West  
69 Virginia, the person designated by the circuit court shall

70 determine the identity of the highest ranking person at  
71 that school and shall automatically disclose all records of  
72 a juvenile's case to that person.

73 (5) If the juvenile does not attend school at the time the  
74 juvenile's case is pending, the person designated by the  
75 circuit court shall not transmit the juvenile's records to  
76 any school. However, the person designated by the circuit  
77 court shall transmit the juvenile's records to any school in  
78 West Virginia which the juvenile subsequently attends.

79 (6) The person designated by the circuit court shall not  
80 automatically transmit juvenile records to a school which  
81 is not located in West Virginia. Instead, the person  
82 designated by the circuit court shall contact the out-of-  
83 state school, inform it that juvenile records exist and make  
84 an inquiry regarding whether the laws of that state permit  
85 the disclosure of juvenile records. If so, the person desig-  
86 nated by the circuit court shall consult with the circuit  
87 judge who presided over the case to determine whether the  
88 juvenile records should be disclosed to the out-of-state  
89 school. The circuit judge shall have discretion in deter-  
90 mining whether to disclose the juvenile records and shall  
91 consider whether the other state's law regarding disclosure  
92 provides for sufficient confidentiality of juvenile records,  
93 using this section as a guide. If the circuit judge orders the  
94 juvenile records to be disclosed, they shall be disclosed in  
95 accordance with the provisions of subdivision (7) of this  
96 subsection.

97 (7) The person designated by the circuit court shall  
98 transmit the juvenile's records to the appropriate school  
99 official under cover of a letter emphasizing the confidenti-  
100 ality of such records and directing the official to consult  
101 this section of the code. A copy of this section of the code  
102 shall be transmitted with the juvenile's records and cover  
103 letter.

104 (8) Juvenile records must be treated as absolutely  
105 confidential by the school official to whom they are

106 transmitted, and nothing contained within the juvenile's  
107 records shall be noted on the juvenile's permanent educa-  
108 tional record. The juvenilerecords are to be maintained in  
109 a secure location and are not to be copied under any  
110 circumstances. However, the principal of a school to  
111 whom the records are transmitted shall have the duty to  
112 disclose the contents of those records to any teacher who  
113 teaches a class in which the subject juvenile is enrolled and  
114 to the regular driver of a school bus in which the subject  
115 juvenile is regularly transported to or from school, except  
116 that the disclosure of the juvenile's psychological test  
117 results and any mental health records shall only be made  
118 in accordance with subdivision (14) of this subsection.  
119 Furthermore, any school official to whom the juvenile's  
120 records are transmitted may disclose the contents of such  
121 records to any adult within the school system who, in the  
122 discretion of the school official, has the need to be aware  
123 of the contents of those records.

124 (9) If for any reason a juvenile ceases to attend a school  
125 which possesses that juvenile's records, the appropriate  
126 official at that school shall seal the records and return  
127 them to the circuit court which sent them to that school.  
128 If the juvenile has changed schools for any reason, the  
129 former school shall inform the circuit court of the name  
130 and location of the new school which the juvenile attends  
131 or will be attending. If the new school is located within  
132 West Virginia, the person designated by the circuit court  
133 shall forward the juvenile's records to the juvenile's new  
134 school in the same manner as provided in subdivision (7)  
135 of this subsection. If the new school is not located within  
136 West Virginia, the person designated by the circuit court  
137 shall handle the juvenile records in accordance with  
138 subdivision (6) of this subsection.

139 If the juvenile has been found not guilty of an offense for  
140 which records were previously forwarded to the juvenile's  
141 school on the basis of a finding of probable cause, the  
142 circuit court shall not forward those records to the juve-

143 nile's new school. However, this shall not affect records  
144 related to other prior or future offenses. If the juvenile has  
145 graduated or quit school or will otherwise not be attending  
146 another school, the circuit court shall retain the juvenile's  
147 records and handle them as otherwise provided in this  
148 article.

149 (10) Under no circumstances shall one school transmit a  
150 juvenile's records to another school.

151 (11) Under no circumstances shall juvenile records be  
152 automatically transmitted to a college, university or other  
153 post-secondary school.

154 (12) No one shall suffer any penalty, civil or criminal, for  
155 accidentally or negligently attributing certain juvenile  
156 records to the wrong person. However, such person shall  
157 have the affirmative duty to promptly correct any mistake  
158 that he or she has made in disclosing juvenile records when  
159 the mistake is brought to his or her attention. A person  
160 who intentionally attributes false information to a certain  
161 person shall be subjected to both criminal and civil  
162 penalties in accordance with subsection (e) of this section.

163 (13) If a judge, magistrate or referee has determined that  
164 there is probable cause to believe that a juvenile has  
165 committed an offense but there has been no final adjudica-  
166 tion of the charge, the records which are transmitted by  
167 the circuit court shall be accompanied by a notice which  
168 clearly states in bold print that there has been no determi-  
169 nation of delinquency and that our legal system requires  
170 a presumption of innocence.

171 (14) The county superintendent shall designate the  
172 school psychologist or psychologists to receive the juve-  
173 nile's psychological test results and any mental health  
174 records. The psychologist designated shall review the  
175 juvenile's psychological test results and any mental health  
176 records and, in the psychologist's professional judgment,  
177 may disclose to the principal of the school that the juvenile

178 attends and other school employees who would have a  
179 need to know the psychological test results, mental health  
180 records and any behavior that may trigger violence or  
181 other disruptive behavior by the juvenile. Other school  
182 employees include, but are not limited to, any teacher who  
183 teaches a class in which the subject juvenile is enrolled and  
184 the regular driver of a school bus in which the subject  
185 juvenile is regularly transported to or from school.

186 (c) Notwithstanding the provisions of subsection (a) of  
187 this section, juvenile records may be disclosed, subject to  
188 the following terms and conditions:

189 (1) If a juvenile case is transferred to the criminal  
190 jurisdiction of the circuit court pursuant to the provisions  
191 of subsection (c) or (d), section ten of this article, the  
192 juvenile records shall be open to public inspection.

193 (2) If a juvenile case is transferred to the criminal  
194 jurisdiction of the circuit court pursuant to the provisions  
195 of subsection (e), (f) or (g), section ten of this article, the  
196 juvenile records shall be open to public inspection only if  
197 the juvenile fails to file a timely appeal of the transfer  
198 order, or the Supreme Court of Appeals refuses to hear or  
199 denies an appeal which has been timely filed.

200 (3) If a juvenile is fourteen years of age or older and a  
201 court has determined there is a probable cause to believe  
202 the juvenile committed an offense set forth in subsection  
203 (g), section ten of this article, but the case is not trans-  
204 ferred to criminal jurisdiction, the juvenile records shall be  
205 open to public inspection pending trial only if the juvenile  
206 is released on bond and no longer detained or adjudicated  
207 delinquent of the offense.

208 (4) If a juvenile is younger than fourteen years of age and  
209 a court has determined there is probable cause to believe  
210 that the juvenile committed the crime of murder under  
211 section one, two or three, article two, chapter sixty-one of  
212 this code, or the crime of sexual assault in the first degree

213 under section three, article eight-b of said chapter, but the  
214 case is not transferred to criminal jurisdiction, the juvenile  
215 records shall be open to public inspection pending trial  
216 only if the juvenile is released on bond and no longer  
217 detained or adjudicated delinquent of the offense.

218 (5) Upon a written petition and pursuant to a written  
219 order, the circuit court may permit disclosure of juvenile  
220 records to:

221 (A) A court, in this state or another state, which has  
222 juvenile jurisdiction and has the juvenile before it in a  
223 juvenile proceeding;

224 (B) A court, in this state or another state, exercising  
225 criminal jurisdiction over the juvenile which requests such  
226 records for the purpose of a presentence report or disposi-  
227 tion proceeding;

228 (C) The juvenile, the juvenile's parents or legal guardian,  
229 or the juvenile's counsel;

230 (D) The officials of a public institution to which the  
231 juvenile is committed if they require such records for  
232 transfer, parole or discharge; or

233 (E) A person who is conducting research. However,  
234 juvenile records may be disclosed for research purposes  
235 only upon the condition that information which would  
236 identify the subject juvenile or the juvenile's family shall  
237 not be disclosed.

238 (6) Notwithstanding any other provision of this code,  
239 juvenile records shall be disclosed, or copies made avail-  
240 able, to a probation officer upon his or her written request  
241 and approved by his or her supervising circuit court judge:  
242 *Provided*, That the clerk of the court shall file the written  
243 request and the judge's approval in the juvenile's record  
244 and note therein the date and scope of the actual disclo-  
245 sure: *Provided, however*, That any probation officer may,  
246 without a court order, access relevant juvenile case

247 information contained in any electronic database main-  
248 tained by or for the Supreme Court of Appeals and share  
249 it with any other probation officer in the same or a  
250 different circuit.

251 (7) Notwithstanding any other provision of this code,  
252 juvenile records shall be disclosed, or copies made avail-  
253 able, in response to any lawfully issued subpoena from a  
254 federal court or federal agency.

255 (d) Any records open to public inspection pursuant to the  
256 provisions of this section are subject to the same require-  
257 ments governing the disclosure of adult criminal records.

258 (e) Any person who willfully violates this section is  
259 guilty of a misdemeanor and, upon conviction thereof,  
260 shall be fined not more than one thousand dollars, or  
261 confined in the county or regional jail for not more than  
262 six months, or both fined and confined and shall be liable  
263 for damages in the amount of three hundred dollars or  
264 actual damages, whichever is greater.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within is approved this the *28<sup>th</sup>*  
Day of *April* ..... 2005.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 15 2005

Time 4:00 pm