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2005 APR 21 P 4:28

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 585

(By Senator Kessler, et al)

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 *28th*
Day of *April* 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 15 2005

Time 4:00 pm