

# Confidentiality of Juvenile Records

SB 504 effective June 10, 2016

Trial Court Rule 18 effective November 1, 2017

*Guidance for child advocacy centers – if you have any questions, please see WV code §49-5-101, 62-6B-2 (Amended Code), and 62-6B-6 (New Code); and Trial Court Rule 18 (WV Supreme Court of Appeals)*

**Q:** What materials does the law cover?

**A:** Recorded interviews and all written documentation that is related to the recorded interview. (§62-6B-2(6) and 62-6B-6(a))

**Q:** How may such materials be released *after* the initiation of a judicial or administrative proceeding?

**A:** By order of a court of competent jurisdiction. (§62-6B-6(a))

**Q:** How may such materials be released *before* the initiation of formal judicial or administrative proceedings?

**A:** Child advocacy centers, child protective service (CPS) workers, law enforcement officers, the prosecuting attorney or any representative of his or her office, or any other person investigating in an official capacity a behavior alleged to constitute child abuse or neglect of a child may all receive a copy of, or reasonable access to, the interview. Those providing treatment to the child may be afforded reasonable access to the interview (not a copy, but are permitted to view). (§62-6B-6(b) and 49-5-101(i))

**Q:** May a parent, guardian, or custodian have a copy of the interview?

**A:** Prior to the initiation of formal judicial or administrative proceedings, no. (§62-6B-6(b)) After the initiation of judicial or administrative proceedings, the courts will determine if access is permitted and issue a court order. (TCR 18.03 (b) (3))

**Q:** May a parent, guardian, or custodian view the interview?

**A:** Under certain circumstances. The entity in possession of the recorded interview is to use the following conditions as guides prior to the initiation of court action: 1) The parent, guardian, or custodian may not be alleged to be involved or engaged in criminal, abusive or neglectful behavior, and 2) showing the interview must not undermine or frustrate an ongoing investigation.<sup>i</sup> (§62-6B-6(b)) After the initiation of court action, the court may allow access to the interview subject to a protective order to counsel to the parents, and parents may only view under the supervision of their counsel or guardian ad litem or their staff, or, if unrepresented, by designated court staff. (TCR 18.03)



**Q:** CPS typically must give the parent/guardian/custodian of a child the records associated with the child upon request of the parent/guardian/custodian. May they give a copy of the interview or the transcript to the parent/guardian/custodian?

**A:** No. (§62-6B-6(b))

**Q:** The statute designates specific treatment providers that may have “reasonable access.” Can we send a copy of the interview to the individuals granted reasonable access?

**A:** No. You may provide them a space in your facility or in a partner agency’s facility to view the interview at a mutually agreeable time, but you may not provide a copy. (§62-6B-6(b)) After the initiation of court proceedings, expedited access through a provisional order may be granted, but the interview must be viewed while in the custody of an “authorized individual” such as a prosecuting attorney. (TCR 18.03 (c))

**Q:** How will judges make decisions about when an interview should be released, what will be contained in the court order, etc.?

**A:** The judge will use the guidelines of TCR 18, and CACs will know of their decision through a protective court order. CACs should never release an interview after the initiation of court actions without a court order. (§62-6B-6(a) and TCR 18)

**Q:** How should CACs label copies of interviews, transcripts of interviews, and related documentation released to other parties?

**A:** Affix a label with the following words: CONFIDENTIAL – PENALTIES FOR UNAUTHORIZED DISCLOSURE OR DUPLICATION

**Q:** What should we do if we receive a request for an interview without a court order?

**A:** Use the template letter WVCAN provides as a standardized response to these requests.

**Q:** What should we do if we receive a subpoena for an interview without a court order?

**A:** Consult with an attorney to determine whether or not you have any obligations.

**Q:** What happens if someone violates this new statute?

**A:** Knowing and willful duplication in violation of this statute will result in a misdemeanor with 10 days to 1 year jail confinement and/or a fine of \$2,000 to \$10,000. (§62-6B-6(d))

---

<sup>i</sup> This section contains a “may”, not a “shall,” so there is discretion. If a parent, guardian, or custodian requests to view the interview, WVCAN suggests the following:



- 
1. A CAC should never permit a parent, guardian, or custodian to view the interview live.
  2. Consult with the prosecutor in the case if a parent, guardian, or custodian requests to view the recorded interview. If the prosecutor does not feel viewing the interview will undermine or frustrate the investigation, keep written confirmation from the prosecutor granting permission in the child's file.
  3. If the CAC decides to show the recorded interview to the parent, guardian, or custodian:
    - a. Ensure other care for child(ren) during the viewing of the interview.
    - b. Secure a private space for the viewing of the interview.
    - c. Have the Family Advocate prepare the parent, guardian, or custodians for what they will see, including explanation of the interviewing process and techniques, an overview of what to expect the child to disclose, etc.
    - d. Have the Family Advocate sit in the viewing room with the family to provide support and answer questions.
    - e. The Family Advocate should talk with the parent, guardian, or custodian after the interview concludes to answer questions, provide support, make them aware of relevant services, discuss safety, etc.

