

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2005

ENROLLED

COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 587

(By Senator *BOWMAN, ET AL*)

PASSED April 9, 2005

In Effect 90 days from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 587

(SENATORS BOWMAN, FACEMYER, GUILLS, LOVE,
EDGELL AND JENKINS, *original sponsors*)

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

AN ACT to amend and reenact §49-6-2 of the Code of West Virginia, 1931, as amended, relating to the appointment of counsel in abuse and neglect cases.

Be it enacted by the Legislature of West Virginia:

That §49-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-2. Petition to court when child believed neglected or abused—right to counsel; improvement period; hearing; priority of proceeding; transcript.

1 (a) In any proceeding under the provisions of this article,
2 the child, his or her or parents and his or her legally
3 established custodian or other persons standing in loco
4 parentis to him or her shall have the right to be repre-
5 sented by counsel at every stage of the proceedings and

6 shall be informed by the court of their right to be so
7 represented and that if they cannot pay for the services of
8 counsel, that counsel will be appointed. Counsel of the
9 child shall be appointed in the initial order. If the order
10 gives physical custody of the child to the state, the initial
11 order shall appoint counsel for the parents or, if the
12 parents are separated or divorced, the parents or parent or
13 other person or persons standing in loco parentis who had
14 physical custody of the child for the majority of the time
15 in the period immediately preceding the petition: *Pro-*
16 *vided*, That such representation shall only continue after
17 the first appearance if the parent or other person standing
18 in loco parentis cannot pay for the services of counsel.
19 Counsel for other parties shall only be appointed upon
20 request for appointment of counsel. If the requesting
21 parties have not retained counsel and cannot pay for the
22 services of counsel, the court shall, by order entered of
23 record, appoint an attorney or attorneys to represent the
24 other party or parties and so inform the parties. Under no
25 circumstances may the same attorney represent both the
26 child and the other party or parties, nor shall the same
27 attorney represent both parents or custodians. However,
28 one attorney may represent both parents or custodians
29 where both parents or guardians consent to this represen-
30 tation after the attorney fully discloses to the client the
31 possible conflict and where the attorney assures the court
32 that she or he is able to represent each client without
33 impairing her or his professional judgment; however, if
34 more than one child from a family is involved in the
35 proceeding, one attorney may represent all the children.
36 The court may allow to each attorney so appointed a fee in
37 the same amount which appointed counsel can receive in
38 felony cases. Any attorney appointed pursuant to this
39 section shall by the first day of July, one thousand nine
40 hundred ninety-three, and three hours per year each year
41 thereafter, receive a minimum of three hours of continuing
42 legal education training on representation of children,
43 child abuse and neglect: *Provided, however*, That where

44 no attorney who has completed this training is available
45 for such appointment, the court shall appoint a competent
46 attorney with demonstrated knowledge of child welfare
47 law to represent the child. Any attorney appointed
48 pursuant to this section shall perform all duties required
49 as an attorney licensed to practice law in the State of West
50 Virginia.

51 (b) In any proceeding brought pursuant to the provisions
52 of this article, the court may grant any respondent an
53 improvement period in accord with the provisions of this
54 article. During such period, the court may require tempo-
55 rary custody with a responsible person which has been
56 found to be a fit and proper person for the temporary
57 custody of the child or children or the state Department or
58 other agency during the improvement period. An order
59 granting such improvement period shall require the
60 Department to prepare and submit to the court a family
61 case plan in accordance with the provisions of section
62 three, article six-d of this chapter.

63 (c) In any proceeding pursuant to the provisions of this
64 article, the party or parties having custodial or other
65 parental rights or responsibilities to the child shall be
66 afforded a meaningful opportunity to be heard, including
67 the opportunity to testify and to present and cross-exam-
68 ine witnesses. The petition shall not be taken as confessed.
69 A transcript or recording shall be made of all proceedings
70 unless waived by all parties to the proceeding. The rules
71 of evidence shall apply. Where relevant, the court shall
72 consider the efforts of the state Department to remedy the
73 alleged circumstances. At the conclusion of the hearing,
74 the court shall make a determination based upon the
75 evidence and shall make findings of fact and conclusions
76 of law as to whether such child is abused or neglected,
77 which shall be incorporated into the order of the court.
78 The findings must be based upon conditions existing at the
79 time of the filing of the petition and proven by clear and
80 convincing proof.

81 (d) Any petition filed and any proceeding held under the
82 provisions of this article shall, to the extent practicable, be
83 given priority over any other civil action before the court,
84 except proceedings under article two-a, chapter forty-
85 eight of this code and actions in which trial is in progress.
86 Any petition filed under the provisions of this article shall
87 be docketed immediately upon filing. Any hearing to be
88 held at the end of an improvement period and any other
89 hearing to be held during any proceedings under the
90 provisions of this article shall be held as nearly as practi-
91 cable on successive days and, with respect to said hearing
92 to be held at the end of an improvement period, shall be
93 held as close in time as possible after the end of said
94 improvement period and shall be held within sixty days of
95 the termination of such improvement period.

96 (e) Following the court's determination, it shall be
97 inquired of the parents or custodians whether or not
98 appeal is desired and the response transcribed. A negative
99 response shall not be construed as a waiver. The evidence
100 shall be transcribed and made available to the parties or
101 their counsel as soon as practicable, if the same is required
102 for purposes of further proceedings. If an indigent person
103 intends to pursue further proceedings, the court reporter
104 shall furnish a transcript of the hearing without cost to the
105 indigent person if an affidavit is filed stating that he or she
106 cannot pay therefor.

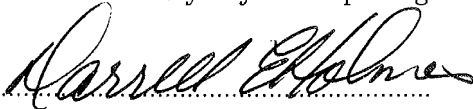
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee

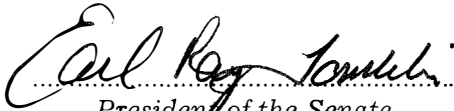

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

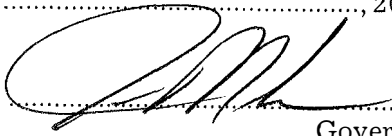

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this the *18th*
Day of *April*, 2005.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 27 2005

Time 10:05am