

H. B. 4520

(By Delegates Poore, Mahan, Guthrie, Wells, Lawrence, Michael, Frazier, White, Miley and Skaff)

[Introduced February 14, 2012; referred to the Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-6-9a, relating to authorizing a family court judge to order a child to be taken into custody in emergency situations which occur in the presence of the judge; and providing procedures when a child is ordered taken into emergency custody.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §49-6-9a, to read as follows:

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

§49-6-9a. Custody ordered from family court in emergency situations.

(a) (1) Where any child in a family court proceeding is under circumstances constituting imminent danger in the presence of a family court judge and the family court judge finds the child to be

1 neglected or abused, as defined in section three, article one of
2 this chapter, the judge may order the child to be taken into the
3 emergency custody of the department without the court order
4 otherwise required by section three of this article, if the judge
5 finds that:

6 (A) There exists an imminent danger to the physical well-being
7 of the child as defined in subsection (g), section three, article
8 one of this chapter; and

9 (B) There are no reasonable available alternatives to the
10 emergency custody order.

11 (2) Upon notification by the family court judge that there
12 exists an imminent danger to the physical well-being of the child
13 the department shall immediately respond and assist the judge in
14 emergency placement of the child.

15 (b) A child taken into emergency protective custody under the
16 provisions of this section may be housed by the department in an
17 authorized child shelter facility if no other reasonable
18 alternative is available to the court. The authority to hold the
19 child in protective custody as provided by this section absent a
20 petition and proper order granting temporary custody pursuant to
21 section three of this article, terminates by operation of law upon
22 expiration of ninety-six hours from the time the child is initially
23 taken into protective custody.

24 (c) The family court judge shall within two judicial days of

1 the emergency custody order issued pursuant to this section, file
2 a written order specifying all of the facts upon which the decision
3 to order the child into protective custody was based and the date,
4 time and place of the taking of the child. A copy of the written
5 order shall be transmitted forthwith to the department, the circuit
6 court and prosecuting attorney. Upon receipt of the written order,
7 the circuit court shall forthwith cause to be entered and served an
8 administrative order in the name of and regarding the affected
9 child directing the department to submit to the family and circuit
10 court an investigative report including whether the department
11 intends to file a petition under section three of this article or
12 intends to appear before the circuit court in not more than ninety-
13 six hours from the taking of the child at a scheduled hearing to
14 show cause why the department's investigation report has not been
15 submitted to the circuit court and family court. The scheduled
16 hearing may become moot by the department's earlier submission of
17 the investigative report or, in the alternative, the filing of an
18 abuse and neglect petition under section three of this article.
19 The family court shall retain full jurisdiction of the child
20 custody or protective order proceedings, or both, until an abuse or
21 neglect petition is filed.

22 (d) Any worker for the department assuming custody of a child
23 pursuant to the provisions of this section shall immediately notify
24 the parents, parent, guardian or custodian of the child of the

1 taking of the custody and the reasons therefor, if the whereabouts
2 of the parents, parent, guardian or custodian are known or can be
3 discovered with due diligence, and if not, a notice and explanation
4 shall be given to the child's closest relative if his or her
5 whereabouts are known or can be discovered with due diligence
6 within a reasonable time. An inquiry shall be made of relatives
7 and neighbors, and if an appropriate relative or neighbor is
8 willing to assume custody of the child, the child shall temporarily
9 be placed in that person's custody.

10 (e) No child may be taken into custody under circumstances not
11 justified by this section or pursuant to section three of this
12 article without appropriate process. Any retention of a child
13 or order for retention of a child not complying with the time
14 limits and other requirements specified in this article are void
15 by operation of law.

NOTE: The purpose of this bill is to allow a family court judge to order a child to be taken into custody in emergency situations which occur in the presence of the judge.

This section is new; therefore, it has been completely underscored.