

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2314**

4 (By Delegates Poore, Guthrie, Wells, Lawrence,
5 Miley and Skaff)

6
7 (Originating in the Committee on the Judiciary)

8 [February 26, 2013]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §49-6-9a, relating to
12 authorizing a family court judge to order the emergency
13 custody of a child in the physical custody of a party to an
14 action or proceeding before the family court; requiring the
15 Department of Health and Human Resources to immediately
16 respond and assist the family court judge in emergency
17 placement of the child; and providing additional procedures
18 when a child is ordered taken into emergency custody.

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

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

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

24 **§49-6-9a. Authorizing a family court judge to order custody of a**
25 **child in emergency situations.**

26 (a) Notwithstanding the jurisdictional limitations contained
27 in section two, article two-A, chapter fifty-one of this code,

1 family court judges are authorized to order the department to take
2 emergency custody of a child who is in the physical custody of a
3 party to an action or proceeding before the family court, if the
4 family court judge finds that there is clear and convincing
5 evidence that:

6 (1) 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;

9 (2) The child is not the subject of a pending action before
10 the circuit court alleging abuse and neglect of the child; and

11 (3) There are no reasonable available alternatives to the
12 emergency custody order.

13 (b) An order entered pursuant to subsection (a) must include
14 specific written findings.

15 (c) A copy of the order issued pursuant to subsection (a)
16 shall be transmitted forthwith to the department, the circuit court
17 and the prosecuting attorney.

18 (d) Upon receipt of an order issued pursuant to subsection
19 (a), the department shall immediately respond and assist the family
20 court judge in emergency placement of the child.

21 (e) (1) Upon receipt of an order issued pursuant to subsection
22 (a), the circuit court shall forthwith cause to be entered and
23 served, an administrative order in the name of and regarding the
24 affected child, directing the department to submit, within ninety-
25 six hours from the time the child was taken into custody, an
26 investigative report to both the circuit and family court.

1 (2) The investigative report shall include a statement of
2 whether the department intends to file a petition under section
3 three of this article.

4 (f) (1) An order issued pursuant to subsection (a) terminates
5 by operation of law upon expiration of ninety-six hours from the
6 time the child is initially taken into protective custody unless a
7 petition is filed with the circuit court under section three of
8 this article within ninety-six hours from the time the child is
9 initially taken into protective custody.

10 (2) The filing of a petition within ninety-six hours from the
11 time the child is initially taken into protective custody extends
12 the emergency custody order issued pursuant to subsection (a) until
13 a preliminary hearing is held before the circuit court, unless the
14 circuit court orders otherwise.

15 (g) (1) Any worker for the department assuming custody of a
16 child pursuant to the provisions of this section shall immediately
17 notify the parents, parent, grandparents, grandparent, guardian or
18 custodian of the child of the taking of the custody and the reasons
19 therefor if the whereabouts of the parents, parent, grandparents,
20 grandparent, guardian or custodian are known or can be discovered
21 with due diligence and, if not, a notice and explanation shall be
22 given to the child's closest relative if his or her whereabouts are
23 known or can be discovered with due diligence within a reasonable
24 time. An inquiry shall be made of relatives and neighbors and, if
25 an appropriate relative or neighbor is willing to assume custody of
26 the child, the child shall temporarily be placed in that person's

1 custody.

2 (2) In the event no other reasonable alternative is available
3 for temporary placement of a child pursuant to subdivision (1), the
4 child may be housed by the department in an authorized child
5 shelter facility.