

Senate Bill No. 385

(By Senators Cookman, Stollings, Unger, Plymale and Palumbo)

[Introduced February 27, 2013; 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. Family court order authorizing custody of a child in
emergency situations.**

1 (a) (1) Where any child in a family court proceeding is under
2 circumstances constituting imminent danger in the presence of a
3 family court judge and the family court judge finds the child to be
4 neglected or abused, as defined in section three, article one of
5 this chapter, the judge may order the child to be taken into the
6 emergency custody of the department without a court order otherwise
7 required by section three of this article, if the judge finds that:

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

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

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

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

1 expiration of ninety-six hours from the time the child is initially
2 taken into protective custody.

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

1 abuse or neglect petition is filed.

2 (d) Any worker for the department assuming custody of a child
3 pursuant to the provisions of this section shall immediately notify
4 the parents, parent, guardian or custodian of the child of the
5 taking of the custody and the reasons therefor if the whereabouts
6 of the parents, parent, guardian or custodian are known or can be
7 discovered with due diligence and, if not, a notice and explanation
8 shall be given to the child's closest relative if his or her
9 whereabouts are known or can be discovered with due diligence
10 within a reasonable time. An inquiry shall be made of relatives
11 and neighbors and, if an appropriate relative or neighbor is
12 willing to assume custody of the child, the child shall temporarily
13 be placed in that person's custody.

14 (e) No child may be taken into custody under circumstances not
15 justified by this section or pursuant to section three of this
16 article without appropriate process. Any retention of a child or
17 order for retention of a child not complying with the time limits
18 and other requirements specified in this article are void by
19 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, strike-throughs and underscoring have been omitted.