

COMMITTEE SUBSTITUTE

for

H. B. 2314

(BY DELEGATES POORE, GUTHRIE, WELLS,
LAWRENCE, MILEY AND SKAFF)

(Originating in the Committee on the Judiciary)
[February 26, 2013]

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 the emergency custody of a child in the physical custody of a party to an action or proceeding before the family court; requiring the Department of Health and Human Resources to immediately respond and assist the family court judge in emergency placement of the child; and providing additional 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. Authorizing a family court judge to order custody of a child in emergency situations.

1 (a) Notwithstanding the jurisdictional limitations contained
2 in section two, article two-A, chapter fifty-one of this code,
3 family court judges are authorized to order the department to
4 take emergency custody of a child who is in the physical custody
5 of a party to an action or proceeding before the family court, if
6 the family court judge finds that there is clear and convincing
7 evidence that:

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

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

13 (3) There are no reasonable available alternatives to the
14 emergency custody order.

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

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

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

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

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

33 (f) (1) An order issued pursuant to subsection (a) terminates
34 by operation of law upon expiration of ninety-six hours from the

35 time the child is initially taken into protective custody unless a
36 petition is filed with the circuit court under section three of this
37 article within ninety-six hours from the time the child is initially
38 taken into protective custody.

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

44 (g) (1) Any worker for the department assuming custody of
45 a child pursuant to the provisions of this section shall
46 immediately notify the parents, parent, grandparents,
47 grandparent, guardian or custodian of the child of the taking of
48 the custody and the reasons therefor if the whereabouts of the
49 parents, parent, grandparents, grandparent, guardian or custodian
50 are known or can be discovered with due diligence and, if not, a
51 notice and explanation shall be given to the child's closest
52 relative if his or her whereabouts are known or can be discovered
53 with due diligence within a reasonable time. An inquiry shall be
54 made of relatives and neighbors and, if an appropriate relative or

55 neighbor is willing to assume custody of the child, the child shall

56 temporarily be placed in that person's custody.

57 (2) In the event no other reasonable alternative is available

58 for temporary placement of a child pursuant to subdivision (1),

59 the child may be housed by the department in an authorized child

60 shelter facility.

