

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4101

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[Originating in the Committee on Prevention &
Treatment of Substance Abuse;
Reported on January 9, 2020.]

1 A BILL to amend and reenact §49-4-604 of the Code of West Virginia, 1931, as amended, relating
2 to requiring a court to verify certain conditions are met before a child who has been
3 removed from a home may be returned to that home.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.

1 (a) *Child and family case plans.* — Following a determination pursuant to §49-4-602 of
2 this code wherein the court finds a child to be abused or neglected, the department shall file with
3 the court a copy of the child’s case plan, including the permanency plan for the child. The term
4 “case plan” means a written document that includes, where applicable, the requirements of the
5 family case plan as provided in §49-4-408 of this code and that also includes, at a minimum, the
6 following:

7 (1) A description of the type of home or institution in which the child is to be placed,
8 including a discussion of the appropriateness of the placement and how the agency which is
9 responsible for the child plans to assure that the child receives proper care and that services are
10 provided to the parents, child, and foster parents in order to improve the conditions that made the
11 child unsafe in the care of his or her parent(s), including any reasonable accommodations in
12 accordance with the Americans with Disabilities Act of 1990, 42 U. S. C. § 12101 *et seq.*, to
13 parents with disabilities in order to allow them meaningful access to reunification and family
14 preservation services;

15 (2) A plan to facilitate the return of the child to his or her own home or the concurrent
16 permanent placement of the child; and address the needs of the child while in relative or foster
17 care, including a discussion of the appropriateness of the services that have been provided to the
18 child.

19 The term “permanency plan” refers to that part of the case plan which is designed to
20 achieve a permanent home for the child in the least restrictive setting available. The plan must
21 document efforts to ensure that the child is returned home within approximate time lines for
22 reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal
23 guardian should be made at the same time, or concurrent with, reasonable efforts to prevent
24 removal or to make it possible for a child to return to the care of his or her parent(s) safely. If
25 reunification is not the permanency plan for the child, the plan must state why reunification is not
26 appropriate and detail the alternative, concurrent permanent placement plans for the child to
27 include approximate time lines for when the placement is expected to become a permanent
28 placement. This case plan shall serve as the family case plan for parents of abused or neglected
29 children. Copies of the child’s case plan shall be sent to the child’s attorney and parent, guardian
30 or custodian or their counsel at least five days prior to the dispositional hearing. The court shall
31 forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be
32 heard.

33 (b) *Disposition decisions.* — The court shall give precedence to dispositions in the
34 following sequence:

35 (1) Dismiss the petition;

36 (2) Refer the child, the abusing parent, the battered parent or other family members to a
37 community agency for needed assistance and dismiss the petition;

38 (3) Return the child to his or her own home under supervision of the department;

39 (4) Order terms of supervision calculated to assist the child and any abusing parent or
40 battered parent or parents or custodian which prescribe the manner of supervision and care of
41 the child and which are within the ability of any parent or parents or custodian to perform;

42 (5) Upon a finding that the abusing parent or battered parent or parents are presently
43 unwilling or unable to provide adequately for the child’s needs, commit the child temporarily to the

44 care, custody, and control of the state department, a licensed private child welfare agency, or a
45 suitable person who may be appointed guardian by the court. The court order shall state:

46 (A) That continuation in the home is contrary to the best interests of the child and why;

47 (B) Whether or not the department has made reasonable efforts, with the child's health
48 and safety being the paramount concern, to preserve the family, or some portion thereof, and to
49 prevent or eliminate the need for removing the child from the child's home and to make it possible
50 for the child to safely return home;

51 (C) Whether the department has made reasonable accommodations in accordance with
52 the Americans with Disabilities Act of 1990, 42 U. S. C. § 12101 *et seq.*, to parents with disabilities
53 in order to allow them meaningful access to reunification and family preservation services;

54 (D) What efforts were made or that the emergency situation made those efforts
55 unreasonable or impossible; and

56 (E) The specific circumstances of the situation which made those efforts unreasonable if
57 services were not offered by the department. The court order shall also determine under what
58 circumstances the child's commitment to the department are to continue. Considerations pertinent
59 to the determination include whether the child should:

60 (i) Be considered for legal guardianship;

61 (ii) Be considered for permanent placement with a fit and willing relative; or

62 (iii) Be placed in another planned permanent living arrangement, but only in cases where
63 the child has attained 16 years of age and the department has documented to the circuit court a
64 compelling reason for determining that it would not be in the best interests of the child to follow
65 one of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order
66 services to meet the special needs of the child. Whenever the court transfers custody of a youth
67 to the department, an appropriate order of financial support by the parents or guardians shall be
68 entered in accordance with §49-4-801 through §49-4-803 of this code;

69 (6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or
70 abuse can be substantially corrected in the near future and, when necessary for the welfare of
71 the child, terminate the parental, custodial and guardianship rights and responsibilities of the
72 abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if
73 there be one, or, if not, to either the permanent guardianship of the department or a licensed child
74 welfare agency. The court may award sole custody of the child to a nonabusing battered parent.
75 If the court shall so find, then in fixing its dispositional order the court shall consider the following
76 factors:

77 (A) The child's need for continuity of care and caretakers;

78 (B) The amount of time required for the child to be integrated into a stable and permanent
79 home environment; and

80 (C) Other factors as the court considers necessary and proper. Notwithstanding any other
81 provision of this article, the court shall give consideration to the wishes of a child 14 years of age
82 or older or otherwise of an age of discretion as determined by the court regarding the permanent
83 termination of parental rights. No adoption of a child shall take place until all proceedings for
84 termination of parental rights under this article and appeals thereof are final. In determining
85 whether or not parental rights should be terminated, the court shall consider the efforts made by
86 the department to provide remedial and reunification services to the parent. The court order shall
87 state:

88 (i) That continuation in the home is not in the best interest of the child and why;

89 (ii) Why reunification is not in the best interests of the child;

90 (iii) Whether or not the department made reasonable efforts, with the child's health and
91 safety being the paramount concern, to preserve the family, or some portion thereof, and to
92 prevent the placement or to eliminate the need for removing the child from the child's home and
93 to make it possible for the child to safely return home, or that the emergency situation made those
94 efforts unreasonable or impossible; and

95 (iv) Whether or not the department made reasonable efforts to preserve and reunify the
96 family, or some portion thereof, including a description of what efforts were made or that those
97 efforts were unreasonable due to specific circumstances.

98 (7) For purposes of the court's consideration of the disposition custody of a child pursuant
99 to this subsection, the department is not required to make reasonable efforts to preserve the
100 family if the court determines:

101 (A) The parent has subjected the child, another child of the parent or any other child
102 residing in the same household or under the temporary or permanent custody of the parent to
103 aggravated circumstances which include, but are not limited to, abandonment, torture, chronic
104 abuse, and sexual abuse;

105 (B) The parent has:

106 (i) Committed murder of the child's other parent, guardian or custodian, another child of
107 the parent, or any other child residing in the same household or under the temporary or permanent
108 custody of the parent;

109 (ii) Committed voluntary manslaughter of the child's other parent, guardian or custodian,
110 another child of the parent, or any other child residing in the same household or under the
111 temporary or permanent custody of the parent;

112 (iii) Attempted or conspired to commit murder or voluntary manslaughter, or been an
113 accessory before or after the fact to either crime;

114 (iv) Committed a malicious assault that results in serious bodily injury to the child, the
115 child's other parent, guardian or custodian, to another child of the parent, or any other child
116 residing in the same household or under the temporary or permanent custody of the parent; or

117 (v) Committed sexual assault or sexual abuse of the child, the child's other parent,
118 guardian or custodian, another child of the parent, or any other child residing in the same
119 household or under the temporary or permanent custody of the parent.

120 (C) The parental rights of the parent to another child have been terminated involuntarily;

121 (D) A parent has been required by state or federal law to register with a sex offender
122 registry, and the court has determined in consideration of the nature and circumstances
123 surrounding the prior charges against that parent, that the child's interests would not be promoted
124 by a preservation of the family.

125 (c) As used in this section, "No reasonable likelihood that conditions of neglect or abuse
126 can be substantially corrected" means that, based upon the evidence before the court, the
127 abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse
128 or neglect on their own or with help. Those conditions exist in the following circumstances, which
129 are not exclusive:

130 (1) The abusing parent or parents have habitually abused or are addicted to alcohol,
131 controlled substances or drugs, to the extent that proper parenting skills have been seriously
132 impaired and the person or persons have not responded to or followed through the recommended
133 and appropriate treatment which could have improved the capacity for adequate parental
134 functioning;

135 (2) The abusing parent or parents have willfully refused or are presently unwilling to
136 cooperate in the development of a reasonable family case plan designed to lead to the child's
137 return to their care, custody and control;

138 (3) The abusing parent or parents have not responded to or followed through with a
139 reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or
140 other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as
141 evidenced by the continuation or insubstantial diminution of conditions which threatened the
142 health, welfare, or life of the child;

143 (4) The abusing parent or parents have abandoned the child;

144 (5) The abusing parent or parents have repeatedly or seriously injured the child physically
145 or emotionally, or have sexually abused or sexually exploited the child, and the degree of family
146 stress and the potential for further abuse and neglect are so great as to preclude the use of

147 resources to mitigate or resolve family problems, or assist the abusing parent or parents in fulfilling
148 their responsibilities to the child; and

149 (6) The battered parent's parenting skills have been seriously impaired and the person
150 has willfully refused or is presently unwilling or unable to cooperate in the development of a
151 reasonable treatment plan, or has not adequately responded to or followed through with the
152 recommended and appropriate treatment plan.

153 (d) The court may, as an alternative disposition, allow the parents or custodians an
154 improvement period not to exceed six months. During this period the court shall require the parent
155 to rectify the conditions upon which the determination was based. The court may order the child
156 to be placed with the parents, or any person found to be a fit and proper person, for the temporary
157 care of the child during the period. At the end of the period, the court shall hold a hearing to
158 determine whether the conditions have been adequately improved and at the conclusion of the
159 hearing shall make a further dispositional order in accordance with this section.

160 (e) For a parent or parents who are participating in a substance use disorder program,
161 prior to reuniting a child with his or her parent or parents, or dismissing the case, the court shall
162 verify that the parent or parents are successfully fulfilling the treatment obligations in the program.

163 ~~(e)~~ (f) The court may not terminate the parental right of a parent on the sole basis that the
164 parent is participating in a ~~medication-assisted treatment~~ substance use disorder program, as
165 ~~regulated in §16-5Y-1 et seq. of this code, for substance use disorder,~~ as long as the parent is
166 successfully fulfilling his or her treatment obligations in the ~~medication-assisted treatment~~
167 program.

NOTE: The purpose of this bill is to require a court to verify that before a child who has been removed from an home may be returned to that home, that if a parent is participating in a medication-assisted treatment program he or she shall be successfully fulfilling their treatment obligations in the program.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.