

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 606

BY SENATORS TRUMP, CLINE, ROBERTS, RUCKER, AND

STOLLINGS

[Introduced January 23, 2020; referred
to the Select Committee on Children and Families;
and then to the Committee on Health and Human
Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §49-4-602a, relating generally to relative placement for foster care and
 3 guardianship; designating a preference for relative placement; requiring the department
 4 to conduct an immediate assessment to locate the child’s relatives; requiring notice to
 5 identified relatives; providing requirements for relative placement; and authorizing the
 6 court to transfer custody to a relative or family friend recommended by the department.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-602a. Relative Placement for Foster Care and Guardianship.

1 (a) Preference for relative placement. - When a child is removed from a parent’s home,
 2 the department, in the absence of clear and convincing evidence of good cause to the contrary,
 3 shall place the child, in the following order of preference, with:

4 (1) An adult family member who is 18 years of age or older and who is related to the child
 5 as the child’s noncustodial parent, grandparent, aunt, uncle, sibling, stepparent, stepgrandparent,
 6 cousin, or as the child’s sibling’s legal guardian or parent;

7 (2) A godparent or family friend;

8 (3) A licensed foster home that is not the home of an adult family member or family friend;

9 or

10 (4) A licensed placement for the child that has a program suitable to meet his or her needs,
 11 including, but not limited to, a licensed specialized foster/adoptive care agency, or in a licensed
 12 Group Residential Facility.

13 (b) Assessment. - When the court determines that a child shall be removed from his or her
 14 home, the department shall conduct an immediate assessment to locate:

15 (1) A noncustodial parent of the child;

16 (2) All adult family members of the child, as set forth in subsection (a)(1) of this section;

17 (3) A godparent or family friend who is not related to the child by blood or marriage but

18 has a strong, positive, and emotional tie or role in the child's life or the parent's life, if the child is
19 an infant.

20 (c) Notice. - If no safety issue was identified in a child maltreatment central registry check
21 or criminal background check regarding all the persons identified in the assessment above, the
22 department shall provide, in writing, notice to those relatives and family friends identified in this
23 section that:

24 (1) Specifies the child has been or is being removed from the custody the parent or parents
25 of the child,

26 (2) Explains the options the relative or family friend under federal, state, and local or tribal
27 law to participate in the care and placement of the child, including any options that may be lost by
28 failing to respond to the notice,

29 (3) Describes the requirements to become a foster family home and the additional services
30 and supports that are available for children in such a home; and

31 (4) Provides information about the state's legal guardianship policy.

32 (5) The name, number, email, and physical address of the caseworker assigned to the
33 case.

34 (d) Requirements for relative placement. - For purposes of determining whether the home
35 of a relative or family friend meets the requirements for placement of a child, the department shall
36 conduct a child welfare safety check, including, but not limited to, criminal background checks
37 from state and national criminal justice information and the child maltreatment central registry for
38 all members of the household 16 years of age and older and a home study. The department shall
39 consider the following issues when placement with a relative or family friend is being considered:

40 (1) If the relative or family friend has a criminal history or substantiated Child Protective
41 Services or Adult Protective Services history.

42 (2) Careful evaluation indicates the relative or family friend will be supportive of the goals
43 of the placement.

44 (3) It appears that the child may be more accepting of a separation from his or her own
45 parents if the child were to be placed with a relative or family friend with whom the child is more
46 familiar.

47 (4) The child has formed a positive relationship with the relative or family friend and is
48 already familiar with the lifestyle and expectations of the relative's or family friend's family.

49 (5) The child, through placement with a relative or family friend, is able to maintain some
50 relationship with the child's family.

51 (6) The child's parents are supportive of the planned placement with the relative or family
52 friend and will cooperate in the process.

53 (7) An evaluation of the relative's or family friends home indicates that it would not
54 perpetuate the same negative family patterns necessitating the removal from the child's own
55 home.

56 (8) The geographic proximity of the relative's home allows for continued planned
57 involvement with the child's parents.

58 (9) The relatives have the physical, mental, and emotional ability to provide care for the
59 child.

60 (e) Placement with Relatives or Family Friends. -

61 (1) The court shall transfer custody of the child to any relative or family friend
62 recommended by the department upon review of a home study, including criminal background
63 and child maltreatment reports, unless there is clear and convincing evidence that such placement
64 is not in the best interests of the child.

65 (2) If no suitable relative or family friend is identified by the department, the court may
66 transfer custody of the child to a licensed foster home that is not an adult family member or family
67 friend, a licensed placement for the child that has a program suitable to meet his or her needs
68 including, but not limited to, a specialized foster/adoptive care agency, or a licensed Group
69 Residential Facility.

NOTE: The purpose of this bill is to amend WV law relating to when a child is removed from the home and placed in out-of-home care to indicate a preference for relative caregivers. This amendment is consistent with federal law under title IV-E of the Social Security Act which requires states receiving federal payments for foster care and adoption assistance to “consider giving preference to an adult relative over a nonrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant state child protection standards.”

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