

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 2314**

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

7
8 [Passed April 9, 2013; in effect ninety days from passage.]
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11 AN ACT to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new section, designated §49-6-9a, relating to
13 authorizing a family court judge to order the emergency
14 custody of a child in the physical custody of a party to an
15 action or proceeding before the family court; requiring the
16 Department of Health and Human Resources to immediately
17 respond and assist the family court judge in emergency
18 placement of the child; providing for circuit court order for
19 department to file an investigative report; providing for
20 termination of family court order; extending order of family
21 court by filing petition; and providing additional procedures
22 for department when a child is ordered taken into emergency
23 custody.

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

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

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

2 **§49-6-9a. Authorizing a family court judge to order custody of a**
3 **child in emergency situations.**

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

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

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

16 (3) There are no reasonable available alternatives to the
17 emergency custody order.

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

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

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

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

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

10 (f) (1) An order issued pursuant to subsection (a) terminates
11 by operation of law upon expiration of ninety-six hours from the
12 time the child is initially taken into protective custody unless a
13 petition is filed with the circuit court under section three of
14 this article within ninety-six hours from the time the child is
15 initially taken into protective custody.

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

21 (g) (1) Any worker for the department assuming custody of a
22 child pursuant to the provisions of this section shall immediately
23 notify the parents, parent, grandparents, grandparent, guardian or
24 custodian of the child of the taking of the custody and the reasons
25 therefor if the whereabouts of the parents, parent, grandparents,
26 grandparent, guardian or custodian are known or can be discovered

1 with due diligence and, if not, a notice and explanation shall be
2 given to the child's closest relative if his or her whereabouts are
3 known or can be discovered with due diligence within a reasonable
4 time. An inquiry shall be made of relatives and neighbors and, if
5 an appropriate relative or neighbor is willing to assume custody of
6 the child, the child shall temporarily be placed in that person's
7 custody.

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