

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2017

By Delegates Summers, Tully and Rohrbach

[Introduced January 11, 2023; Referred to the
Committee on Health and Human Resources]

1 A BILL to amend and reenact §49-4-601 of the Code of West Virginia, 1931, as amended, relating
2 to requiring the sheriff to serve child abuse and neglect petitions without additional
3 compensation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to counsel; continuing legal education; findings; proceedings; procedure.

1 (a) *Petitioner and venue.* — If the department or a reputable person believes that a child is
2 neglected or abused, the department or the person may present a petition setting forth the facts to
3 the circuit court in the county in which the child resides, or if the petition is being brought by the
4 department, in the county in which the custodial respondent or other named party abuser resides,
5 or in which the abuse or neglect occurred, or to the judge of the court in vacation. Under no
6 circumstance may a party file a petition in more than one county based on the same set of facts.

7 (b) *Contents of Petition.* — The petition shall be verified by the oath of some credible
8 person having knowledge of the facts. The petition shall allege specific conduct including time and
9 place, how the conduct comes within the statutory definition of neglect or abuse with references to
10 the statute, any supportive services provided by the department to remedy the alleged
11 circumstances, and the relief sought. Each petition shall name as a party each parent, guardian,
12 custodian, other person standing in loco parentis of or to the child allegedly neglected or abused
13 and state with specificity whether each parent, guardian, custodian, or person standing in loco
14 parentis is alleged to have abused or neglected the child.

15 (c) *Court action upon filing of petition.* — Upon filing of the petition, the court shall set a time
16 and place for a hearing and shall appoint counsel for the child. When there is an order for
17 temporary custody pursuant to this article, the preliminary hearing shall be held within 10 days of
18 the order continuing or transferring custody, unless a continuance for a reasonable time is granted
19 to a date certain, for good cause shown.

20 (d) *Department action upon filing of the petition.* — At the time of the institution of any
21 proceeding under this article, the department shall provide supportive services in an effort to
22 remedy circumstances detrimental to a child.

23 (e) *Notice of hearing.* —

24 (1) The petition and notice of the hearing shall be served by the sheriff's office, without
25 additional compensation, upon both parents and any other guardian, custodian, or person
26 standing in loco parentis, giving to the persons at least five days' actual notice of a preliminary
27 hearing and at least 10 days' notice of any other hearing.

28 (2) Notice shall be given to the department, any foster or pre-adoptive parent, and any
29 relative providing care for the child.

30 (3) In cases where personal service within West Virginia cannot be obtained after due
31 diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall
32 be mailed to the person by certified mail, addressee only, return receipt requested, to the last
33 known address of the person. If the person signs the certificate, service is complete and the
34 certificate shall be filed as proof of the service with the clerk of the circuit court.

35 (4) If service cannot be obtained by personal service or by certified mail, notice shall be by
36 publication as a Class II legal advertisement in compliance with §59-3-1 *et seq.* of this code.

37 (5) A notice of hearing shall specify the time and place of the hearings, the right to counsel
38 of the child, parents, and other guardians, custodians, and other persons standing in loco parentis
39 with the child and the fact that the proceedings can result in the permanent termination of the
40 parental rights.

41 (6) Failure to object to defects in the petition and notice may not be construed as a waiver.

42 (f) *Right to counsel.* —

43 (1) In any proceeding under this article, the child shall have counsel to represent his or her
44 interests at all stages of the proceedings.

45 (2) The court's initial order shall appoint counsel for the child, and for any parent, guardian,
46 custodian, or other person standing in loco parentis with the child if such person is without retained
47 counsel.

48 (3) The court shall, at the initial hearing in the matter, determine whether persons other
49 than the child for whom counsel has been appointed:

50 (A) Have retained counsel; and

51 (B) Are financially able to retain counsel.

52 (4) A parent, guardian, custodian, or other person standing in loco parentis with the child
53 who is alleged to have neglected or abused the child and who has not retained counsel and is
54 financially unable to retain counsel beyond the initial hearing, shall be afforded appointed counsel
55 at every stage of the proceedings.

56 (5) Under no circumstances may the same attorney represent both the child and another
57 party. The same attorney may not represent more than one parent or custodian: *Provided*, That
58 one attorney may represent both parents or custodians where both parents or custodians consent
59 to this representation after the attorney fully discloses to the client the possible conflict and where
60 the attorney advises the court that he or she is able to represent each client without impairing his or
61 her professional judgment; if more than one child from a family is involved in the proceeding, one
62 attorney may represent all the children.

63 (6) A parent who is a co-petitioner is entitled to his or her own attorney.

64 (7) The court may allow to each attorney appointed pursuant to this section a fee in the
65 same amount which appointed counsel can receive in felony cases.

66 (8) The court shall, sua sponte or upon motion, appoint counsel to any unrepresented party
67 if, at any stage of the proceedings, the court determines doing so is necessary to satisfy the
68 requirements of fundamental fairness.

69 (g) *Continuing education for counsel.* — Any attorney representing a party under this
70 article shall receive a minimum of eight hours of continuing legal education training per reporting

71 period on child abuse and neglect procedure and practice. In addition to this requirement, any
72 attorney appointed to represent a child must first complete training on representation of children
73 that is approved by the administrative office of the Supreme Court of Appeals. The Supreme Court
74 of Appeals shall develop procedures for approval and certification of training required under this
75 section. Where no attorney has completed the training required by this subsection, the court shall
76 appoint a competent attorney with demonstrated knowledge of child welfare law to represent the
77 parent or child. Any attorney appointed pursuant to this section shall perform all duties required of
78 an attorney licensed to practice law in the State of West Virginia.

79 (h) *Right to be heard.* — In any proceeding pursuant to this article, the party or parties
80 having custodial or other parental rights or responsibilities to the child shall be afforded a
81 meaningful opportunity to be heard, including the opportunity to testify and to present and cross-
82 examine witnesses. Foster parents, pre-adoptive parents, and relative caregivers shall also have
83 a meaningful opportunity to be heard.

84 (i) *Findings of the court.* — Where relevant, the court shall consider the efforts of the
85 department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing,
86 the court shall make a determination based upon the evidence and shall make findings of fact and
87 conclusions of law as to whether the child is abused or neglected and whether the respondent is
88 abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the
89 order of the court. The findings must be based upon conditions existing at the time of the filing of
90 the petition and proven by clear and convincing evidence.

91 (j) *Priority of proceedings.* — Any petition filed and any proceeding held under this article
92 shall, to the extent practicable, be given priority over any other civil action before the court, except
93 proceedings under §48-27-309 of this code and actions in which trial is in progress. Any petition
94 filed under this article shall be docketed immediately upon filing. Any hearing to be held at the end
95 of an improvement period and any other hearing to be held during any proceedings under this
96 article shall be held as nearly as practicable on successive days and, with respect to the hearing to

97 be held at the end of an improvement period, shall be held as close in time as possible after the
98 end of the improvement period and shall be held within 30 days of the termination of the
99 improvement period.

100 (k) *Procedural safeguards.* — The petition may not be taken as confessed. A transcript or
101 recording shall be made of all proceedings unless waived by all parties to the proceeding. The
102 rules of evidence shall apply. Following the court's determination, it shall ask the parents or
103 custodians whether or not an appeal is desired and the response transcribed. A negative response
104 may not be construed as a waiver. The evidence shall be transcribed and made available to the
105 parties or their counsel as soon as practicable, if the transcript is required for purposes of further
106 proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall
107 furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating
108 that he or she cannot pay the transcript.

NOTE: The purpose of this bill is to require the sheriff serve child abuse and neglect petitions without additional compensation.

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