

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2017**

By Delegates Summers, Tully and Rohrbach

[Originating in the Committee on the Judiciary; Reported on January 26, 2023]

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 with additional  
3 compensation; requiring the rate of compensation to be set by the Supreme Court of  
4 Appeals; requiring the sheriff to serve the petition and notice of a preliminary hearing;  
5 clarifying the procedure for notices of subsequent hearings; and exempting the sheriff from  
6 further mechanisms for notice of the petition and preliminary hearing.

*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 preliminary hearing shall be served by the sheriff's office,  
25 with additional compensation at a rate set forth annually by the Supreme Court of Appeals, upon  
26 both parents and any other guardian, custodian, or person standing in loco parentis, giving to the  
27 persons at least five days' actual notice of a preliminary hearing and at least 10 days' notice of any  
28 other hearing. Notice of any other hearing shall give the persons at least 10 days' notice or such  
29 notice as otherwise required by rules promulgated by the Supreme Court of Appeals.

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

32 (3) In cases where personal service within West Virginia cannot be obtained by the sheriff's  
33 office after due diligence upon any parent or other custodian, a copy of the petition and notice of  
34 the preliminary hearing shall be mailed to the person by certified mail, addressee only, return  
35 receipt requested, to the last known address of the person as directed by the court: Provided, That  
36 the sheriff's office will not be responsible for the certified mailing. If the person signs the certificate,  
37 service is complete and the certificate shall be filed as proof of the service with the clerk of the  
38 circuit court.

39 (4) If service of the petition and notice of the preliminary hearing cannot be obtained by  
40 personal service or by certified mail, notice shall be by publication as a Class II legal  
41 advertisement in compliance with §59-3-1 *et seq.* of this code: Provided, That the sheriff's office  
42 will not be responsible for the publication of the Class II legal advertisement.

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

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

48 (f) *Right to counsel.* —

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

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

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

56 (A) Have retained counsel; and

57 (B) Are financially able to retain counsel.

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

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

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

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

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

75 (g) *Continuing education for counsel.* — Any attorney representing a party under this  
76 article shall receive a minimum of eight hours of continuing legal education training per reporting  
77 period on child abuse and neglect procedure and practice. In addition to this requirement, any  
78 attorney appointed to represent a child must first complete training on representation of children  
79 that is approved by the administrative office of the Supreme Court of Appeals. The Supreme Court  
80 of Appeals shall develop procedures for approval and certification of training required under this  
81 section. Where no attorney has completed the training required by this subsection, the court shall  
82 appoint a competent attorney with demonstrated knowledge of child welfare law to represent the  
83 parent or child. Any attorney appointed pursuant to this section shall perform all duties required of  
84 an attorney licensed to practice law in the State of West Virginia.

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

90 (i) *Findings of the court.* — Where relevant, the court shall consider the efforts of the  
91 department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing,  
92 the court shall make a determination based upon the evidence and shall make findings of fact and  
93 conclusions of law as to whether the child is abused or neglected and whether the respondent is  
94 abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the

95 order of the court. The findings must be based upon conditions existing at the time of the filing of  
96 the petition and proven by clear and convincing evidence.

97 (j) *Priority of proceedings.* — Any petition filed and any proceeding held under this article  
98 shall, to the extent practicable, be given priority over any other civil action before the court, except  
99 proceedings under §48-27-309 of this code and actions in which trial is in progress. Any petition  
100 filed under this article shall be docketed immediately upon filing. Any hearing to be held at the end  
101 of an improvement period and any other hearing to be held during any proceedings under this  
102 article shall be held as nearly as practicable on successive days and, with respect to the hearing to  
103 be held at the end of an improvement period, shall be held as close in time as possible after the  
104 end of the improvement period and shall be held within 30 days of the termination of the  
105 improvement period.

106 (k) *Procedural safeguards.* — The petition may not be taken as confessed. A transcript or  
107 recording shall be made of all proceedings unless waived by all parties to the proceeding. The  
108 rules of evidence shall apply. Following the court's determination, it shall ask the parents or  
109 custodians whether or not an appeal is desired and the response transcribed. A negative response  
110 may not be construed as a waiver. The evidence shall be transcribed and made available to the  
111 parties or their counsel as soon as practicable, if the transcript is required for purposes of further  
112 proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall  
113 furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating  
114 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.

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