

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4796

By Delegates Summers, Petitto, Rohrbach, Pushkin,

Miller, Griffith, Brooks and Espinosa

[Introduced January 16, 2024; Referred

to the Committee on Health and Human Resources

then Judiciary]

1 A BILL to amend and reenact §49-4-601 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §49-4-604 of said code, all relating to parental rights.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

Part VI. Procedures in Cases of Child Neglect or Abuse

§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 person
8 having knowledge of the facts. The petition shall allege specific conduct including time and place,
9 how the conduct comes within the statutory definition of neglect or abuse with references thereto,
10 any supportive services provided by the department to remedy the alleged circumstances and the
11 relief sought.

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

17 (d) *Department action upon filing of the petition.* -- At the time of the institution of any
18 proceeding under this article, the department shall provide supportive services in an effort to

19 remedy circumstances detrimental to a child.

20 (e) *Notice of hearing.* --

21 (1) The petition and notice of the hearing shall be served upon both parents and any other
22 custodian, giving to the parents or custodian at least five days' actual notice of a preliminary
23 hearing and at least ten days' notice of any other hearing.

24 (2) Notice shall be given to the department, any foster or preadoptive parent, and any
25 relative providing care for the child.

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

31 (4) If service cannot be obtained by personal service or by certified mail, notice shall be by
32 publication as a Class II legal advertisement in compliance with article three, chapter fifty-nine of
33 this code.

34 (5) A notice of hearing shall specify the time and place of the hearing, the right to counsel of
35 the child and parents or other custodians at every stage of the proceedings and the fact that the
36 proceedings can result in the permanent termination of the parental rights.

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

38 (f) *Right to counsel.* --

39 (1) In any proceeding under this article, the child, his or her parents and his or her legally
40 established custodian or other persons standing in *loco parentis* to him or her has the right to be
41 represented by counsel at every stage of the proceedings and shall be informed by the court of
42 their right to be so represented and that if they cannot pay for the services of counsel, that counsel
43 will be appointed.

44 (2) Counsel shall be appointed in the initial order. For parents, legal guardians, and other

45 persons standing in *loco parentis*, the representation may only continue after the first appearance
46 if the parent or other persons standing in *loco parentis* cannot pay for the services of counsel.

47 (3) Counsel for other parties shall only be appointed upon request for appointment of
48 counsel. If the requesting parties have not retained counsel and cannot pay for the services of
49 counsel, the court shall, by order entered of record, appoint an attorney or attorneys to represent
50 the other party or parties and so inform the parties.

51 (4) Under no circumstances may the same attorney represent both the child and the other
52 party or parties, nor may the same attorney represent both parents or custodians. However, one
53 attorney may represent both parents or custodians where both parents or guardians consent to
54 this representation after the attorney fully discloses to the client the possible conflict and where the
55 attorney assures the court that she or he is able to represent each client without impairing her or
56 his professional judgment; however, if more than one child from a family is involved in the
57 proceeding, one attorney may represent all the children.

58 (5) A parent who is a copetitioner is entitled to his or her own attorney. The court may allow
59 to each attorney so appointed a fee in the same amount which appointed counsel can receive in
60 felony cases.

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

71 (h) *Right to be heard.* -- In any proceeding pursuant to this article, the party or parties
72 having custodial or other parental rights or responsibilities to the child shall be afforded a
73 meaningful opportunity to be heard, including the opportunity to testify and to present and cross-
74 examine witnesses. Foster parents, preadoptive parents, and relative caregivers shall also have a
75 meaningful opportunity to be heard.

76 (i) *Findings of the court.* -- Where relevant, the court shall consider the efforts of the
77 department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing,
78 the court shall make a determination based upon the evidence and shall make findings of fact and
79 conclusions of law as to whether the child is abused or neglected and whether the respondent is
80 abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the
81 order of the court. The findings must be based upon conditions existing at the time of the filing of
82 the petition and proven by clear and convincing evidence. The court may not remove a child on the
83 basis that the parent is participating in a medication-assisted treatment program, as regulated in
84 §16-5Y-1 et seq. of this code, for substance use disorder, as long as the parent is successfully
85 fulfilling his or her treatment obligations in the medication-assisted treatment program or for taking
86 a prescribed medication.

87 (j) *Priority of proceedings.* -- Any petition filed and any proceeding held under this article
88 shall, to the extent practicable, be given priority over any other civil action before the court, except
89 proceedings under section three hundred nine, article twenty-seven, chapter forty-eight of this
90 code and actions in which trial is in progress. Any petition filed under this article shall be docketed
91 immediately upon filing. Any hearing to be held at the end of an improvement period and any other
92 hearing to be held during any proceedings under this article shall be held as nearly as practicable
93 on successive days and, with respect to the hearing to be held at the end of an improvement
94 period, shall be held as close in time as possible after the end of the improvement period and shall
95 be held within thirty days of the termination of the improvement period.

96 (k) *Procedural safeguards.* -- The petition may not be taken as confessed. A transcript or

97 recording shall be made of all proceedings unless waived by all parties to the proceeding. The
98 rules of evidence shall apply. Following the court's determination, it shall be inquired of the parents
99 or custodians whether or not appeal is desired and the response transcribed. A negative response
100 may not be construed as a waiver. The evidence shall be transcribed and made available to the
101 parties or their counsel as soon as practicable, if the same is required for purposes of further
102 proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall
103 furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating
104 that he or she cannot pay therefor.

**§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 this
2 code wherein the court finds a child to be abused or neglected, the department shall file with the
3 court a copy of the child's case plan, including the permanency plan for the child. The term "case
4 plan" means a written document that includes, where applicable, the requirements of the family
5 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 or kinship parents in order to improve the conditions that
11 made the child unsafe in the care of his or her parent(s), including any reasonable
12 accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C.
13 §12101 *et seq.*, to parents with disabilities in order to allow them meaningful access to
14 reunification and family 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 kinship 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) Requirements for a Guardian ad litem. —**

34 A guardian ad litem appointed pursuant to §49-4-601(f)(1) of this code, shall, in the
35 performance of his or her duties, adhere to the requirements of the Rules of Procedure for Child
36 Abuse and Neglect Proceedings and the Rules of Professional Conduct and such other rules as
37 the West Virginia Supreme Court of Appeals may promulgate, and any appendices thereto, and
38 must meet all educational requirements for the guardian ad litem. A guardian ad litem may not be
39 paid for his or her services without meeting the certification and educational requirements of the
40 court. The West Virginia Supreme Court of Appeals is requested to provide guidance to the judges
41 of the circuit courts regarding supervision of said guardians ad litem. The West Virginia Supreme
42 Court of Appeals is requested to review the Rules of Procedure for Child Abuse and Neglect

43 Proceedings and the Rules of Professional Conduct specific to guardians ad litem.

44 (c) *Disposition decisions.* — The court shall give precedence to dispositions in the
45 following sequence:

46 (1) Dismiss the petition;

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

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

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

53 (5) Upon a finding that the abusing parent or battered parent or parents are presently
54 unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the
55 care, custody, and control of the department, a licensed private child welfare agency, or a suitable
56 person who may be appointed guardian by the court. The court order shall state:

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

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

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

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

67 (E) The specific circumstances of the situation which made those efforts unreasonable if
68 services were not offered by the department. The court order shall also determine under what

69 circumstances the child's commitment to the department are to continue. Considerations pertinent
70 to the determination include whether the child should:

71 (i) Be considered for legal guardianship;

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

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

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

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

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

90 (C) Other factors as the court considers necessary and proper. Notwithstanding any other
91 provision of this article, the court shall give consideration to the wishes of a child 14 years of age or
92 older or otherwise of an age of discretion as determined by the court regarding the permanent
93 termination of parental rights. No adoption of a child shall take place until all proceedings for
94 termination of parental rights under this article and appeals thereof are final. In determining

95 whether or not parental rights should be terminated, the court shall consider the efforts made by
96 the department to provide remedial and reunification services to the parent. The court order shall
97 state:

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

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

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

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

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

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

115 (B) The parent has:

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

119 (ii) Committed voluntary manslaughter of the child's other parent, guardian, or custodian,
120 another child of the parent, or any other child residing in the same household or under the

121 temporary or permanent custody of the parent;

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

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

127 (v) Attempted or conspired to commit malicious assault, as outlined in subparagraph (iv),
128 or been an accessory before or after the fact to the same;

129 (vi) Committed sexual assault or sexual abuse of the child, the child's other parent,
130 guardian, or custodian, another child of the parent, or any other child residing in the same
131 household or under the temporary or permanent custody of the parent; or

132 (vii) Attempted or conspired to commit sexual assault or sexual abuse, as outlined in
133 subparagraph (vi), or been an accessory before or after the fact to the same.

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

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

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

144 (1) The abusing parent or parents have habitually abused or are addicted to alcohol,
145 controlled substances or drugs, to the extent that proper parenting skills have been seriously
146 impaired and the person or persons have not responded to or followed through the recommended

147 and appropriate treatment which could have improved the capacity for adequate parental
148 functioning;

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

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

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

158 (5) The abusing parent or parents have repeatedly or seriously injured the child physically
159 or emotionally, or have sexually abused or sexually exploited the child, and the degree of family
160 stress and the potential for further abuse and neglect are so great as to preclude the use of
161 resources to mitigate or resolve family problems, or assist the abusing parent or parents in fulfilling
162 their responsibilities to the child; and

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

167 (e) The court may, as an alternative disposition, allow the parents or custodians an
168 improvement period not to exceed six months. During this period the court shall require the parent
169 to rectify the conditions upon which the determination was based. The court may order the child to
170 be placed with the parents, or any person found to be a fit and proper person, for the temporary
171 care of the child during the period. At the end of the period, the court shall hold a hearing to
172 determine whether the conditions have been adequately improved and at the conclusion of the

173 hearing shall make a further dispositional order in accordance with this section.

174 (f) The court may not terminate the parental rights of a parent on the ~~sole~~ basis that the
175 parent is participating in a medication-assisted treatment program, as regulated in §16-5Y-1 *et*
176 *seq.*, for substance use disorder, as long as the parent is successfully fulfilling his or her treatment
177 obligations in the medication-assisted treatment program or for taking a prescribed medication.

NOTE: The purpose of this bill is to prohibit the removal or termination of parental rights of person who is participating in MAT or taking prescribed medications.

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