

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5062

By Delegates Burkhammer, Pinson, Hornby, Heckert,

Riley, Petitto, W. Hall, and Kimble

[Originating in the Committee on the Judiciary;

Reported on February 21, 2024]

1 A BILL to amend and reenact §49-4-601 of the Code of West Virginia, 1931, as amended, relating
2 to procedures in cases of child neglect or abuse; allowing a guardian ad litem to request
3 the appointment of a court appointed special advocate if that circuit court is serviced by a
4 court appointed special advocate.

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
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
10 thereto, any supportive services provided by the department to remedy the alleged circumstances
11 and the 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
62 article shall receive a minimum of eight hours of continuing legal education training per reporting
63 period on child abuse and neglect procedure and practice. In addition to this requirement, any
64 attorney appointed to represent a child must first complete training on representation of children
65 that is approved by the administrative office of the Supreme Court of Appeals. The Supreme Court
66 of 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.

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

92 (k) *Procedural safeguards.* — The petition may not be taken as confessed. A transcript or
93 recording shall be made of all proceedings unless waived by all parties to the proceeding. The

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

101 (l) CASA. — The guardian ad litem may request the appointment of a court appointed
102 special advocate, which the circuit court may appoint if a court appointed special advocate
103 provides services to the circuit court with jurisdiction over the proceedings instituted pursuant to
104 this section.

NOTE: The purpose of this bill is to allow a guardian ad litem to request the appointment of a court appointed special advocate in cases of child neglect or abuse.

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