

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5526

By Delegates Rowe, Pinson, Burkhammer, W. Hall,
Pushkin, Hornbuckle, Griffith, Hamilton, and Hansen

[Introduced February 08, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §49-4-601c, relating to creating a pilot program to provide legal services,
 3 advice, and representation to parents who are facing legal issues that may otherwise result
 4 in the removal of their child or children.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

Part VI. Procedures in Cases of Child Neglect or Abuse.

§49-4-601c. The Pre-petition Legal Services Pilot Program.

1 (a) Legislative Findings – It is the belief of the Legislature of West Virginia that the parents
 2 of the children of this state are not always aware of, capable of, or currently able to pursue the legal
 3 options that may be available to avoid removal of the children from a home. Currently, there are no
 4 guarantees that anyone, much less an attorney, will be available to answer questions, make
 5 referrals, or support a parent attempting to change their environment, behaviors, or mindset in
 6 order to keep their children in their lives. For this reason, the Legislature believes that a Pilot
 7 Program involving Public Defender Services, Legal Aid of West Virginia, West Virginia Department
 8 of Human Services, and any other state-level, community, or municipal organizations willing to
 9 help should be instigated to ensure the future of our state's children can, whenever possible, be
 10 centered in a home where they are safe, loved, and surrounded by family.

11 (b) Scope of Program – This program will be designed to address the issues that
 12 traditionally arise at the pre-petition phase of abuse and neglect proceedings as described in §49-
 13 4-601 of this code. The program will make use of legal services organizations designed to assist
 14 the indigent with legal representation, advice, and to help make referrals to appropriate aid
 15 organizations. It shall be the goal of this project to determine the statistical precursors to an abuse
 16 and neglect petition, devise programs and services directed specifically to help remedy those
 17 precursors, and to best determine how to provide the services necessary to accomplish these

18 tasks. Currently, the West Virginia and United States Constitutions guarantee the fundamental
19 personal liberty a parent enjoys in the right to raise, care for, and educate their children. This is why
20 a parent is guaranteed representation, currently through Public Defender Services in West
21 Virginia, when those rights are threatened. However, by the time a petition has been made,
22 problems that could have been addressed with much less intervention at an earlier stage have
23 spiraled beyond the control of the parent in question. Issues like substance use disorder, financial
24 uncertainty, and mental health issues can catapult a parent into a system that will ultimately result
25 in the loss of their rights as a parent. This program will be designed in such a way as to identify the
26 potential triggers for a petition, address those triggers and issues in the home, and ultimately
27 attempt to ensure permanency at home, with a child's biological parents.

28 (c) Definitions – For the purposes of this section, the following definitions shall be used:

29 (1) "Petition" means a petition filed with the circuit court of the county in question which
30 alleges that a child is suffering abuse, neglect, or abandonment at those terms are defined in §49-
31 1-201 et seq. of this code.

32 (2) "Pre-petition legal services" means any intervention in the familial environment that is
33 intended to prevent an eventual petition for abuse and neglect. This can include representation by
34 a licensed attorney for civil matters that this program has determined are causally related to
35 petitions of abuse and neglect, legal advice, without representation, provided to parents and family
36 members concerning the various issues they may be facing that could lead to a petition, social
37 work advocacy and referrals to programs, places, and people who are prepared to help avoid the
38 eventual petition, and involvement of community, county, and municipal programs who have the
39 aim of helping to avoid the circumstances that lead to petitions for abuse and neglect.

40 (d) Funding – Funding shall be accomplished through the reimbursement system devised
41 as part of the Title IV-E Foster Care Program and subject to the same review process as current
42 foster care programs.

43 (e) Application - Services shall be provided on a continuum of support depending on the

44 needs of the family in question. Legal representation shall be provided by various legal
45 organizations, including Public Defender Services, Legal Aid of West Virginia, and other legal
46 service organizations, to help address the criminal and civil issues that the program has identified
47 as pre-cursors to eventual petitions. In addition to legal services, the social workers currently
48 employed by both Public Defender Services and Legal Aid of West Virginia shall make appropriate
49 assessments to gauge the needs of the parent in question and make referrals to the programs
50 best suited to help address the issues that may arise at the pre-petition stage to help ensure a
51 petition is never necessary nor completed. These referrals, in collaboration with the Bureau for
52 Social Services in the Department of Human Services, will be designed specifically to ensure
53 family-placement permanency and help address issues that may eventually lead to a petition.

54 (f) Counties involved in the pilot program – The legislature, in collaboration with Public
55 Defender Services, Legal Aid of West Virginia, and the West Virginia Department of Human
56 Services, shall commence all necessary research, summon witnesses and experts, and
57 determine the counties that are most in need of pre-petition intervention. When these counties are
58 identified, these organizations shall make plans, taking into account the available resources in
59 said counties, to help best address the needs of the parents currently at risk for the instigation of
60 abuse and neglect petitions.

61 (g) This pilot program shall begin its information gathering activities on July 1, 2024.

NOTE: The purpose of this bill is to create a pilot program to provide legal services, advice, and representation to parents who are facing legal issues that may otherwise result in the removal of their child or children.

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