

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 588**

By Senators Chapman, Maynard, Rucker, and Deeds

[Introduced January 29, 2024; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §49-2-802 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §49-4-601 of said code, all relating to requiring that parents named as  
 3 a respondent in an abuse and neglect case, or in an investigation by Child Protective  
 4 Services, are given a copy of their rights that is written in plain, understandable language;  
 5 and giving authority to ensure receipt of said rights to the prosecutor of the county in which  
 6 the investigation is taking place.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

Part VIII. Reports of Children Suspected of Abuse.

**§49-2-802. Establishment of child protective services; general duties and powers; administrative procedure; immunity from civil liability; cooperation of other state agencies.**

1 (a) The department shall establish or designate in every county a local child protective  
 2 services office to perform the duties and functions set forth in this article.

3 (b) The local child protective services office shall investigate all reports of child abuse or  
 4 neglect. Under no circumstances may investigating personnel be relatives of the accused, the  
 5 child or the families involved. In accordance with the local plan for child protective services, it shall  
 6 provide protective services to prevent further abuse or neglect of children and provide for or  
 7 arrange for and coordinate and monitor the provision of those services necessary to ensure the  
 8 safety of children. The local child protective services office shall be organized to maximize the  
 9 continuity of responsibility, care, and service of individual workers for individual children and  
 10 families. Under no circumstances may the secretary or his or her designee promulgate rules or  
 11 establish any policy which restricts the scope or types of alleged abuse or neglect of minor children  
 12 which are to be investigated or the provision of appropriate and available services.

13 (c) Each local child protective services office shall:

14 (1) Receive or arrange for the receipt of all reports of children known or suspected to be  
15 abused or neglected on a 24-hour, seven-day-a-week basis and cross-file all reports under the  
16 names of the children, the family, and any person substantiated as being an abuser or neglecter by  
17 investigation of the Department of Health and Human Resources, with use of cross-filing of the  
18 person's name limited to the internal use of the department: *Provided*, That local child protective  
19 services offices shall disclose the names of alleged abusers pursuant to §49-2-802(c)(4) of this  
20 code;

21 (2) Provide or arrange for emergency children's services to be available at all times;

22 (3) Upon notification of suspected child abuse or neglect, commence or cause to be  
23 commenced a thorough investigation of the report and the child's environment. As a part of this  
24 response, within 14 days there shall be a face-to-face interview with the child or children and the  
25 development of a protection plan, if necessary, for the safety or health of the child, which may  
26 involve law-enforcement officers or the court. Before any investigation may proceed, the  
27 prosecutor of the county in which the investigation is being made shall provide a thorough  
28 description of the rights any potential respondent enjoys and ample time to read and understand  
29 the information. This information shall be presented in plain, understandable language and not be  
30 so lengthy as to impede quick review and completion of the investigation. This document shall be  
31 presented before an investigation begins and may be provided to the subject of the investigation  
32 by the prosecuting attorney for the county in which the investigation is being made, by the Child  
33 Protective Services workers when they arrive on the scene to begin the investigation, or both. The  
34 subject of the investigation enjoys the right to halt any further proceedings until they are satisfied  
35 that they understand their rights;

36 (4) Make efforts as soon as practicable to determine the military status of parents whose  
37 children are subject to abuse or neglect allegations. If the office determines that a parent or  
38 guardian is in the military, the department shall notify a Department of Defense family advocacy  
39 program that there is an allegation of abuse and neglect that is screened in and open for

40 investigation that relates to that military parent or guardian;

41 (5) Respond immediately to all allegations of imminent danger to the physical well-being of  
42 the child or of serious physical abuse. As a part of this response, within 72 hours there shall be a  
43 face-to-face interview with the child or children and the development of a protection plan, which  
44 may involve law-enforcement officers or the court; and

45 (6) In addition to any other requirements imposed by this section, when any matter  
46 regarding child custody is pending, the circuit court or family court may refer allegations of child  
47 abuse and neglect to the local child protective services office for investigation of the allegations as  
48 defined by this chapter and require the local child protective services office to submit a written  
49 report of the investigation to the referring circuit court or family court within the time frames set  
50 forth by the circuit court or family court.

51 (d) In those cases in which the local child protective services office determines that the  
52 best interests of the child require court action, the local child protective services office shall initiate  
53 the appropriate legal proceeding.

54 (e) The local child protective services office shall be responsible for providing, directing, or  
55 coordinating the appropriate and timely delivery of services to any child suspected or known to be  
56 abused or neglected, including services to the child's family and those responsible for the child's  
57 care.

58 (f) To carry out the purposes of this article, all departments, boards, bureaus, and other  
59 agencies of the state or any of its political subdivisions and all agencies providing services under  
60 the local child protective services plan shall, upon request, provide to the local child protective  
61 services office any assistance and information as will enable it to fulfill its responsibilities.

62 (g)(1) In order to obtain information regarding the location of a child who is the subject of an  
63 allegation of abuse or neglect, the Secretary of the Department of Health and Human Resources  
64 may serve, by certified mail or personal service, an administrative subpoena on any corporation,  
65 partnership, business, or organization for the production of information leading to determining the

66 location of the child.

67 (2) In case of disobedience to the subpoena, in compelling the production of documents,  
68 the secretary may invoke the aid of:

69 (A) The circuit court with jurisdiction over the served party if the person served is a  
70 resident; or

71 (B) The circuit court of the county in which the local child protective services office  
72 conducting the investigation is located if the person served is a nonresident.

73 (3) A circuit court shall not enforce an administrative subpoena unless it finds that:

74 (A) The investigation is one the Division of Child Protective Services is authorized to make  
75 and is being conducted pursuant to a legitimate purpose;

76 (B) The inquiry is relevant to that purpose;

77 (C) The inquiry is not too broad or indefinite;

78 (D) The information sought is not already in the possession of the Division of Child  
79 Protective Services; and

80 (E) Any administrative steps required by law have been followed.

81 (4) If circumstances arise where the secretary, or his or her designee, determines it  
82 necessary to compel an individual to provide information regarding the location of a child who is  
83 the subject of an allegation of abuse or neglect, the secretary, or his or her designee, may seek a  
84 subpoena from the circuit court with jurisdiction over the individual from whom the information is  
85 sought.

86 (h) No child protective services caseworker may be held personally liable for any  
87 professional decision or action taken pursuant to that decision in the performance of his or her  
88 official duties as set forth in this section or agency rules promulgated thereupon. However, nothing  
89 in this subsection protects any child protective services worker from any liability arising from the  
90 operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton  
91 misconduct, or intentional misconduct.

**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. Additionally, the prosecutor of the county in which the  
17 petition is made shall make a copy of the rights of the respondent available for review. This  
18 document shall be a uniform creation and used statewide. The prosecutor shall provide this  
19 document either through the mail, in person, or in any other fashion that ensures the respondent is  
20 made aware of their rights. The prosecutor shall make all reasonable attempts to provide this  
21 document in a way that suits any and all manner of accommodations requested by the respondent.

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

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

26           (1) The petition and notice of the hearing shall be served upon both parents and any other  
27 custodian, giving to the parents or custodian at least five days' actual notice of a preliminary  
28 hearing and at least ten days' notice of any other hearing. If the prosecutor has been unable to  
29 communicate the rights described in §49-4-601(c) of this code, the prosecutor shall ensure that  
30 this document is attached to the petition when it is served upon the respondent.

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

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

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

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

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

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

46           (1) In any proceeding under this article, the child, his or her parents and his or her legally  
47 established custodian or other persons standing in loco parentis to him or her has the right to be

48 represented by counsel at every stage of the proceedings and shall be informed by the court of  
49 their right to be so represented and that if they cannot pay for the services of counsel, that counsel  
50 will be appointed.

51 (2) Counsel shall be appointed in the initial order. For parents, legal guardians, and other  
52 persons standing in loco parentis, the representation may only continue after the first appearance  
53 if the parent or other persons standing in loco parentis cannot pay for the services of counsel.

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

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

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

68 (g) *Continuing education for counsel.* -- Any attorney representing a party under this article  
69 shall receive a minimum of eight hours of continuing legal education training per reporting period  
70 on child abuse and neglect procedure and practice. In addition to this requirement, any attorney  
71 appointed to represent a child must first complete training on representation of children that is  
72 approved by the administrative office of the Supreme Court of Appeals. The Supreme Court of  
73 Appeals shall develop procedures for approval and certification of training required under this



74 section. Where no attorney has completed the training required by this subsection, the court shall  
75 appoint a competent attorney with demonstrated knowledge of child welfare law to represent the  
76 parent or child. Any attorney appointed pursuant to this section shall perform all duties required of  
77 an attorney licensed to practice law in the State of West Virginia.

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

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

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

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

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

NOTE: The purpose of this bill is to require that parents, named as a respondent, in an abuse and neglect case or investigation by Child Protective Services are given a copy of their rights that is written in plain, understandable language and giving authority to ensure receipt of said rights to the prosecutor of the county in which the investigation is taking place.

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