

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **House Bill 2042**

By Delegate Burkhammer

[Introduced February 12, 2025; referred  
to the Committee on the Judiciary]

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.