

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2201

By Delegate Steele

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

1 A BILL to amend and reenact §49-4-112 of the Code of West Virginia, 1931, as amended, and by
2 adding thereto a new section, designated §49-4-112a, relating to adoption and legal
3 guardianship proceedings arising from abuse or neglect proceeding; requiring department
4 pay attorney's fees for representing adoptive parents; providing process for adoption of
5 juveniles resulting to an underlying abuse or neglect complaint; and providing effective
6 date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-112. Subsidized adoption and legal guardianship; conditions.

1 (a) From funds appropriated to the Department of Human Services, the secretary shall
2 establish a system of assistance for facilitating the adoption or legal guardianship of children. An
3 adoption subsidy shall be available for children who are legally free for adoption and who are
4 dependents of the department. A legal guardianship subsidy may not require the surrender or
5 termination of parental rights. For either subsidy, the children must be in special circumstances
6 because one or more of the following conditions inhibit their adoption or legal guardianship
7 placement:

8 (1) They have a physical or mental disability;

9 (2) They are emotionally disturbed;

10 (3) They are older children;

11 (4) They are a part of a sibling group; or

12 (5) They are a member of a racial or ethnic minority.

13 (b)(1) The department shall provide assistance in the form of subsidies or services to
14 parents who are found and approved for adoption or legal guardianship of a child certified as
15 eligible for subsidy by the department, but before the final decree of adoption or order of legal
16 guardianship is entered, there shall be a written agreement between the family entering into the
17 subsidized adoption or legal guardianship and the department.

(2) Adoption or legal guardianship subsidies in individual cases may commence with the adoption or legal guardianship placement and will vary with the needs of the child as well as the availability of other resources to meet the child's needs. The subsidy may be for services, money payments, for a limited period, or for a long term, or for any combination of the foregoing.

(3) The specific financial terms of the subsidy shall be included in the agreement between the department and the adoptive parents or legal guardians. The agreement ~~may~~ shall recognize and must provide for the department to make direct payment ~~by the department of attorney's fees to an attorney representing the adoptive parent or legal guardian of attorney's fees to the attorney representing the prospective adoptive parents or legal guardians.~~ Any such payment for attorney's fees shall be made directly to the attorney representing the adoptive parent or legal guardian.

(4) The amount of the subsidy may in no case exceed that which would be allowable for the child under foster family care or, in the case of a service, the reasonable fee for the service rendered.

(5) The department shall provide either Medicaid or other health insurance coverage for any special needs child for whom there is an adoption or legal guardianship assistance agreement, and who the department determines cannot be placed without medical assistance.

(c) The department shall certify the child as eligible for a subsidy to obtain adoption or a legal guardianship if it is in the best interest of the child.

(d) All records regarding subsidized adoptions or legal guardianships are to be held in confidence; however, records regarding the payment of public funds for subsidized adoptions or legal guardianships shall be available for public inspection provided they do not directly or indirectly identify any child or person receiving funds for the child.

(e) A payment may not be made to adoptive parents or legal guardians of child:

(1) Who has attained 18 years of age, unless the department determines that the child has a special need which warrants the continuation of assistance or the child is continuing his or her education or actively engaging in employment;

(2) Who has obtained 21 years of age;

(3) Who has not attained 18 years of age, if the department determines that the adoptive parent or legal guardian is no longer supporting the child by performing actions to maintain a familial bond with the child.

(f) Adoptive parents and legal guardians who receive subsidy payments pursuant to this section shall keep the department informed of circumstances which would, pursuant to §49-4-112(e) of this code, make them ineligible for the payment.

§49-4-112a. Adoption and Legal Guardianship Proceedings Related to Abuse and Neglect Cases.

(a) Notwithstanding any other provision in this code, when an adoption or legal guardianship proceeding originates as a result of an approved permanency plan in a juvenile abuse and neglect proceeding under §49-4-101 et seq., the petition seeking approval of the legal guardianship and adoption on behalf of the potential placement guardians or adoptive parents shall be filed in the Circuit Court having jurisdiction over that juvenile abuse and neglect case.

(b) Notwithstanding any other provision in this code, when an adoption petition or a legal guardianship petition is filed pursuant to this section, the clerk of the circuit court shall assign the case relating to that petition to the same circuit judge who presided over the underlying juvenile abuse and neglect proceeding and assign the case a civil action number that corresponds to the specific type of petition being filed.

(c) All adoptions not subject to the provisions of this section shall be filed and shall proceed in accordance with the requirements of §48-22-101 et seq.

(d) For adoptions or legal guardianships filed under this section, potential adoptive parents or legal guardians may elect to hire a lawyer of their choice, if they compensate the attorney privately for legal services and pay the adoption case filing fee. However, if the potential adoptive parents or legal guardians otherwise qualify for an adoption or legal guardianship subsidy and desire to receive the subsidy for payment of attorney's fees pursuant to §49-4-112(b)(3), the

attorney representing the potential adoptive parents or legal guardians must be selected and appointed by order of the circuit judge presiding over the underlying juvenile abuse and neglect case as a condition of the potential adoptive parents or legal guardians receiving any adoption or legal guardianship subsidy, pursuant to the following procedure:

(1) Prior to filing any adoption or legal guardianship petition, the potential adoptive parents or legal guardians as determined by the circuit court's permanent placement review order, the department, or any applicable adoption agency, must file a written motion requesting that the circuit court appoint a lawyer to represent the potential adoptive parents or legal guardians in pursuing the adoption or legal guardianship petition. Within five judicial days, the circuit court shall thereafter appoint a duly licensed and qualified attorney to represent the potential adoptive parents or legal guardians in pursuing the adoption or legal guardianship petition from the circuit court's list of panel attorneys utilized for appointment in the following types of cases:

(A) Juvenile abuse and neglect;

(B) Juvenile delinquency;

(C) Juvenile status offenses;

(D) Juvenile guardian ad litem appointments;

(E) Adult criminal appointments; or

(F) Habeas corpus.

(2) Notwithstanding the requirements of subdivision (1) of this subsection, the circuit court shall not appoint any current, or former, attorney of record in the underlying juvenile abuse and neglect proceeding as the adoption or legal guardianship attorney; and

(3) Upon receipt of the appointment pursuant to this section, the adoption attorney shall thereafter timely file an adoption petition in the circuit court under this section consistent with the timing requirements of §48-22-701(a). An attorney that is appointed to represent potential legal guardians shall timely file a legal guardianship petition as directed by the appointing court; and

(4) The state shall compensate the appointed adoption or legal guardianship attorney

44 directly for legal services and the adoption case filing fee consistent with §49-4-112(b)(3).

45 (5) An attorney that is appointed to represent potential adoptive parents or legal guardians
46 shall have access to the underlying juvenile abuse and neglect case files relevant to the children
47 subject to the adoption or legal guardianship. The court's order appointing the attorney, for the
48 purposes outlined in this subdivision, shall have language that specifically grant the appointed
49 attorney access to the underlying juvenile abuse or neglect proceedings.

50 (e) If any child adopted or placed in a legal guardianship under this section is subsequently
51 removed by the department from the adoptive or guardianship home or if there is a subsequent
52 relinquishment by any adoptive parent, the circuit court that handled the adoption or legal
53 guardianship pursuant to this section shall be considered the court of proper jurisdiction for
54 purposes of any future modification of placement pursuant to §49-4-606(b), or pursuant to the
55 West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings: *Provided*, That this
56 provision only applies to relinquishments that:

57 (1) Are not the result of a subsequent abuse and neglect petition that is filed against the
58 adoptive parents or legal guardians in the circuit court of proper jurisdiction pursuant to §49-4-606,
59 or filed in another county, which shall be controlled by subsection (f) of this section; and

60 (2) Have been brought before the circuit court of proper jurisdiction pursuant to §49-4-606
61 through a motion filed by the adoptive parent or legal guardians requesting permission to
62 relinquish their parental or guardianship rights and modify placement for the child based upon the
63 relinquishment or a petition from the department or third-party seeking appointment of a guardian
64 in place of the adoptive parents or legal guardians.

65 (f) If an adoptive parent relinquishes their parental rights pursuant to this section, such
66 relinquishment shall be controlled by §49-4-607 and Rule 35 of the West Virginia Rules of
67 Procedure for Child Abuse and Neglect Proceedings and the circuit court shall have discretion to
68 order the relinquishment of all parental rights of the adoptive parent.

69 (g) If a legal guardian relinquishes their guardianship rights pursuant to this section, the

70 court shall make the following inquiry at a hearing held pursuant to §49-4-606:

71 (1) If the guardian is present in court and voluntarily has signed a duly acknowledged
72 relinquishment of guardianship rights, the court shall determine whether the parent fully
73 understands the consequences of a relinquishment of guardianship rights, is aware of possible
74 less drastic alternatives than relinquishment, was informed of the right to a hearing and to
75 representation by counsel, and was the signed relinquishment entered into under circumstances
76 free from duress, coercion, and fraud;

77 (2) If the guardian is not present in court but has signed a relinquishment of guardianship
78 rights, the court shall determine whether the guardian was thoroughly advised of and understood
79 the consequences of a relinquishment of guardianship rights, is aware of possible less drastic
80 alternatives than relinquishment, was informed of the right to a hearing and to representation by
81 counsel, and was the signed relinquishment entered into under circumstances free from duress,
82 coercion, and fraud.

83 (h) The circuit court of proper jurisdiction, pursuant to §49-4-606, also retains jurisdiction to
84 modify placement following the death of the last remaining adoptive parent or guardian if the child
85 subject to the adoption or legal guardianship is still a minor at that time of death.

86 (i) If a petition under §49-4-601 et seq. is filed against the adoptive parents or guardians
87 based upon allegations of abuse or neglect, the circuit court in the county where the abuse and
88 neglect occurred shall have jurisdiction over that petition and shall preside over all proceedings.
89 The adoptive parents and legal guardians shall be entitled to all legal rights, due process
90 protections, and procedures required by §49-4-601 et seq. before any court could modify the
91 child's permanent placement: *Provided*, That once a juvenile abuse or neglect case is subject to a
92 permanent placement review conference, the circuit court in which the proceeding is pending and
93 any other circuit court with powers enumerated in §49-4-606, if different, shall confer to determine
94 whether the proceeding should be transferred to the circuit court with powers enumerated in §49-
95 4-606: *Provided, however*, That any determination that a circuit court is an inconvenient forum

96 under the circumstances and that another circuit court is the more appropriate forum to make
97 further permanency decisions under §49-4-606 shall be based upon the requirements of §48-20-
98 207. After any conference of circuit courts required in this subsection, the circuit court of
99 jurisdiction shall retain exclusive jurisdiction for purposes of any further modifications of
100 disposition or changes in permanency, including any future adoption petitions which may relate to
101 the same children, unless directed otherwise by rules promulgated by the Supreme Court of
102 Appeals of West Virginia.

103 (j) The Supreme Court of Appeals of West Virginia may amend current rules and
104 promulgate new rules related to appointment of attorneys to represent potential adoptive parents
105 or legal guardians under this section, including, but not limited to, adoption case jurisdiction; legal
106 guardianship jurisdiction, adoptive parents, legal guardians, the department and adoption
107 agencies providing written notice to the circuit court regarding an adoption attorney appointment
108 under this section; and adoption or legal guardianship attorney qualifications including, but not
109 limited to, education, training and experience requirements along with any minimum number of
110 other court-appointed cases an attorney must accept to be eligible to receive adoption or legal
111 guardianship appointments.

112 (k) The effective date for the provisions hereof shall be January 1, 2026, and the changes
113 related to adoption and legal guardianship jurisdiction and process shall only apply to new abuse
114 and neglect cases where the initial petition has been filed after this effective date.

NOTE: The purpose of this bill relates to adoption and legal guardianship proceedings arising from abuse or neglect proceeding; requiring department pay attorney's fees for representing adoptive parents; providing process for adoption of juveniles resulting to an underlying abuse or neglect complaint; and providing effective date.

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