

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

House Bill 4603

By Delegates Burkhammer, Mazzocchi, Chiarelli,
Flanigan, Heckert, Kimble, Miller, Pinson, and
Funkhouser

[Originating in the Committee on the Judiciary;

Reported on February 18, 2026]

1 A BILL to amend and reenact §29-21-2 of the Code of West Virginia, 1931, as amended, relating to
2 expanding the definition of “eligible proceeding” to include pre-adjudicatory alternative
3 diversion proceedings; appointment of a guardian for a minor in a circuit court pursuant to a
4 pre-adjudicatory alternative diversion; to amend and reenact §44-10-3 of said code
5 relating to the creation of a process to appoint a guardian in child abuse and neglect cases
6 where a pre-adjudicatory alternative diversion has been granted; clarifying that two years
7 after an order appointing a guardian has been entered in a guardianship proceeding that
8 was filed pursuant to §49-4-607a a petition for adoption may be filed in the circuit court
9 exercising jurisdiction over the original abuse and neglect proceeding providing certain
10 requirements are satisfied; to amend and reenact §44-10-5 of said code exempting legal
11 guardianships instituted pursuant to the granting of a pre-adjudicatory alternative diversion
12 from bonding requirements; to amend and reenact §49-4-601b of said code relating to the
13 expungement process where child abuse and neglect substantiations have occurred by
14 the department in cases where a pre-adjudicatory alternative diversion has been granted;
15 to amend and reenact §49-4-607a of said code relating to the creation of the process of
16 obtaining and adjudicating a pre-adjudicatory alternative diversion.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-2. Definitions.

1 As used in this article, the following words and phrases are hereby defined:

- 2 (1) "Eligible client": Any person who meets the requirements established by this article to
3 receive publicly funded legal representation in an eligible proceeding as defined herein;
- 4 (2) "Eligible proceeding": Criminal charges which may result in incarceration; juvenile
5 proceedings; proceedings to revoke parole or probation if the revocation may result in

6 incarceration; contempt of court; child abuse and neglect proceedings which may result in a
7 termination of parental rights; pre-adjudicatory alternative diversion proceedings; appointment of a
8 guardian for a minor in a circuit court pursuant to a pre-adjudicatory alternative diversion; mental
9 hygiene commitment proceedings; extradition proceedings; proceedings which are ancillary to an
10 eligible proceeding, including, but not limited to, proceedings to enhance sentences brought
11 pursuant to ~~sections eighteen and nineteen, article eleven, chapter sixty-one~~ §61-11-18 and §61-
12 11-19 of this code, forfeiture proceedings brought pursuant to ~~article seven, chapter sixty-a of this~~
13 ~~code~~ §60A-7-701 et seq. of this code, and proceedings brought to obtain extraordinary remedies;
14 and appeals from or post-conviction challenges to the final judgment in an eligible proceeding.
15 Legal representation provided pursuant to the provisions of this article is limited to the court
16 system of the State of West Virginia, but does not include representation in municipal courts
17 unless the accused is at risk of incarceration;

18 (3) "Legal representation": The provision of any legal services or legal assistance as
19 counsel or guardian ad litem consistent with the purposes and provisions of this article;

20 (4) "Private practice of law": The provision of legal representation by a public defender or
21 assistant public defender to a client who is not entitled to receive legal representation under the
22 provisions of this article, but does not include, among other activities, teaching;

23 (5) "Public defender": The staff attorney employed on a full-time basis by a public defender
24 corporation who, in addition to providing direct representation to eligible clients, has administrative
25 responsibility for the operation of the public defender corporation. The public defender may be a
26 part-time employee if the board of directors of the public defender corporation finds efficient
27 operation of the corporation does not require a full-time attorney and the executive director
28 approves such part-time employment;

29 (6) "Assistant public defender": A staff attorney providing direct representation to eligible
30 clients whose salary and status as a full-time or part-time employee are fixed by the board of
31 directors of the public defender corporation;

(7) "Public defender corporation": A corporation created under section eight of this article for the sole purpose of providing legal representation to eligible clients; and

(8) "Public defender office": An office operated by a public defender corporation to provide legal representation under the provisions of this article.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-3. Appointment and termination of guardian for a minor.

(a) The circuit court and family court have concurrent jurisdiction to appoint a guardian for a minor: Provided, That jurisdiction to appoint a guardian for a minor pursuant to §49-4-607a of this code shall be in the circuit court exercising jurisdiction of the underlying juvenile abuse and neglect proceeding.

(b) Venue for a petition for appointment of guardianship is in the county in which the minor has resided for the past six months unless the court finds extraordinary circumstances for a sooner filing. If the child is a nonresident of this state and only the guardianship of the estate is sought the petition may be filed in the county in which the child has an estate: Provided, That venue for a petition for appointment of guardianship pursuant to §49-4-607a of this code shall be in the circuit court exercising jurisdiction of the underlying juvenile abuse and neglect proceeding.

(c) All proceedings shall be conducted in accordance with the Rules of Practice and Procedure for Minor Guardianship Proceedings.

(d) Any responsible person with knowledge of the facts regarding the welfare and best interests of a minor may petition for an appointment of a guardian except a parent or other person whose rights to the minor have been terminated. No guardianship petition may be considered if the

child who is the subject of the petition is involved in another court proceeding relating to custody or guardianship or if the petitioner is a parent seeking custodial rights adverse to the other parent; Provided, That a guardianship petition made pursuant §49-4-607a of this code shall be considered by the circuit judge presiding over the underlying juvenile abuse and neglect proceeding which gave rise to this action.

(e) Within two days of the filing of a petition for the appointment of a guardian, the circuit clerk shall notify the court. The court shall hold a hearing upon the petition for the appointment of a guardian within ten days after the petition is filed. If all persons entitled to service in accordance with the Rules of Practice and Procedure for Minor Guardianship Proceedings have not been served at least five days prior to the hearing or have not waived service the court shall continue the hearing but may appoint a temporary guardian pursuant to subsection (g) below.

(f) When a petition for the appointment of a guardian is filed pursuant to §49-4-607a of this code, the petition shall have attached thereto a certified copy of the underlying juvenile abuse and neglect order authorizing the filing of a petition for the appointment of a guardian. Within two days of the filing of a petition for the appointment of a guardian, the circuit clerk shall notify the circuit court of the filing of the petition. Notwithstanding the provisions of subsection (e) of this section, upon receipt of the notice of the filing of the petition from the circuit clerk, the circuit judge presiding over the underlying juvenile abuse and neglect proceeding which gave rise to this action shall promptly schedule a hearing with the parties and their counsel and enter an order designating the time and location of the hearing and shall also direct the guardian ad litem in the underlying juvenile child abuse and neglect proceeding to provide a written report to the court that demonstrates whether the appointment of a guardian pursuant to §49-4-607a of this code is in the child's best interests. This hearing shall address the petition for the appointment of a guardian and shall be held within 30 days after the petition is filed.

~~(f)~~ (g) The court may appoint a guardian for a minor if the court finds by clear and convincing evidence that the appointment is in the minor's best interest and:

(1) The parents consent;

(2) The parents' rights have been previously terminated;

(3) The parents are unwilling or unable to exercise their parental rights;

(4) The parents have abandoned their rights by a material failure to exercise them for a period of more than six months; or

(5) There are extraordinary circumstances that would, in all reasonable likelihood, result in serious detriment to the child if the petition is denied.

~~(g)~~ (h) Whether or not one or more of the conditions of subsection (f) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists or that a period of transition into the custody of a parent is needed so long as the appointment is in the best interest of the minor. The temporary guardian has the authority of a guardian appointed pursuant to subsection (f) but the duration of the temporary guardianship may not exceed six months. A temporary guardianship may be extended beyond six months upon further order of the court finding continued need in the best interest of the minor.

~~(h)~~ (i) Any suitable person may be appointed as the minor's guardian. A parent shall receive priority subject only to the provisions of subsections (d) and (f) above. However, in every case the competency and fitness of the proposed guardian must be established and a determination made that the appointment is in the best interest of the child.

~~(i)~~ (j) When a petition for the appointment of a guardian is filed pursuant to §49-4-607a of this code, the court may appoint a guardian for a minor if the court finds by clear and convincing evidence that the appointment is in the minor's best interest and:

(1) All parents having or asserting parental rights to the minor consent to the appointment of a guardian or the parents' rights have been previously terminated;

(2) The Department of Human Services consents to the appointment of a guardian; and

(3) The guardian ad litem in the underlying juvenile child abuse and neglect proceeding has provided a written report to the court that demonstrates that the appointment of a guardian

pursuant to §49-4-607a of this code is in the minor's best interests;

(k) The Department of Human Services, in cases seeking to appoint a guardian pursuant to §49-4-607a of this code, shall file any order entered by a circuit court appointing a guardian pursuant to this article in the underlying juvenile abuse and neglect proceeding.

(l) The court, the guardian or the minor may revoke or terminate the guardianship appointment when:

(1) The minor reaches the age of eighteen and executes a release stating that the guardian's estate was properly administered and that the minor has received the assets of the estate from the guardian;

(2) The guardian or the minor dies;

(3) The guardian petitions the court to resign and the court enters an order approving the resignation; or

(4) A petition is filed by the guardian, the minor, a parent or an interested person or upon the motion of the court stating that the minor is no longer in need of the assistance or protection of a guardian due to changed circumstances and the termination of the guardianship would be in the minor's best interest.

(j) (m) For a petition to revoke or terminate a guardianship filed by a parent, the burden of proof is on the moving party to show by a preponderance of the evidence that there has been a material change of circumstances and that a revocation or termination is in the child's best interest: Provided, that a guardianship that was granted in a case filed pursuant to the provisions of §49-4-607a may be revoked, modified, or terminated by a parent pursuant to a filed petition with the circuit judge presiding over the underlying juvenile abuse and neglect, the burden of proof is on the moving party to show by clear and convincing evidence that there has been a material change of circumstances and that a revocation, modification, or termination is in the child's best interest: Provided That if the circuit judge presiding over the underlying juvenile abuse and neglect proceeding is not available to preside over a petition to revoke, modify, or terminate a guardianship

94 filed by a parent, then the circuit court having jurisdiction over the original child abuse and neglect
95 proceeding shall preside over the proceeding. All costs and legal fees of a proceeding
96 contemplated in this subsection shall be borne by the moving party.

97 (k) (n) A guardianship may not be terminated by the court if there are any assets in the
98 estate due and payable to the minor. Another guardian may be appointed upon the resignation of a
99 guardian whenever there are assets in the estate due and payable to the minor.

100 (l) (o) Other than court orders and case indexes, all other records of a guardian proceeding
101 involving a minor are confidential and shall not be disclosed to anyone who is not a party to the
102 proceeding, counsel of record for the proceeding, the court presiding over the proceeding or other
103 family or circuit court presiding over another proceeding involving the minor absent a court order
104 permitting examination of such records.

105 (p) (1) Any appointment of a guardian granted pursuant to the provisions of §49-4-607a
106 shall be eligible for the filing of a petition for adoption by the guardian, pursuant to §48-22-101 et
107 seq. of this code, two years from the entry of the order appointing a guardian. The court may grant
108 the adoption if the court finds by clear and convincing evidence that the adoption is in the minor's
109 best interest and:

110 (A) All parents having or asserting parental rights to the minor consent to the adoption or
111 the parents' parental rights have been previously terminated;

112 (B) The Department of Human Services consents to the adoption;

113 (C) The guardian ad litem in the underlying juvenile child abuse and neglect proceeding
114 has provided a written report to the court that demonstrates that adoption is in the minor's best
115 interests.

116 (2) For purposes of this subsection, the circuit court having jurisdiction over the original
117 child abuse and neglect proceeding shall retain jurisdiction of an adoption proceeding filed
118 pursuant to §48-22-101 et seq. of this code.

§44-10-5. Bond of guardian.

1 (a) Every guardian, except in cases filed pursuant to 49-4-607a and in the case of a
2 testamentary guardian where the will otherwise directs and the court in which the will is recorded
3 deems it unnecessary for the safety of the ward, shall give bond with security to be approved by
4 the court by whom he or she is appointed, or before whom he or she accepts the trust, in such
5 penalty as shall be prescribed by the court.

6 (b) The bond shall be given before the clerk of the court in which the petition is filed.

CHAPTER 49. CHILD WELFARE.

**§49-4-601b. Substantiation by the department of abuse and neglect; file purging;
expungement; exceptions.**

1 (a) Notwithstanding any provision of this code to the contrary, when the department
2 substantiates an allegation of abuse and/or neglect against a person, but there is no judicial
3 finding of abuse and/or neglect as a result of the allegation, the department shall provide written
4 notice of the substantiation to the person by certified mail, return receipt requested.

5 (b) The person against whom an abuse and/or neglect allegation has been substantiated,
6 as described in subsection (a) of this section, has the right to contest the substantiation by filing a
7 grievance with the board of review of the department and has the right to appeal the decision of the
8 board of review to the court, in accordance with the provisions of §29A-5-1 *et seq.* of this code
9 regarding administrative appeals.

10 (c) The secretary of the department shall propose legislative rules for promulgation in
11 accordance with §29A-3-1 *et seq.* of this code, within the applicable time limit to be considered by
12 the Legislature during its regular session in the year 2021, which rules shall include, at a minimum:

(1) Provisions for ensuring that an individual against whom the department has substantiated an allegation of abuse and/or neglect, but against whom there is no judicial finding of abuse and/or neglect, receives written notice of the substantiation in a timely manner. The written notice shall at a minimum, state the following:

(A) The name of the child the person is alleged to have abused and/or neglected, the place or places where the abuse and/or neglect allegedly occurred, and the date or dates on which the abuse and/or neglect is alleged to have occurred;

(B) That the person has a right to file a grievance protesting the substantiation of abuse and/or neglect with the board of review of the department and clear instructions regarding how to file a grievance with the board of review, including a description of any applicable time limits;

(C) That the person has a right to appeal an adverse decision of the board of review of the department to the courts and notice of any applicable time limits; and

(D) A description of any public or nonpublic registry on which the person's name will be included as a result of a substantiated allegation of abuse and/or neglect and a statement that the inclusion of the person's name on the registry may prevent the person from holding jobs from which child abusers are disqualified, or from providing foster or kinship care to a child in the future;

(2) Provisions for ensuring that a person against whom an allegation of abuse and/or neglect has been substantiated, but against whom there is no judicial finding of abuse and/or neglect, may file a grievance with the department and provisions guaranteeing that he or she will have a full and fair opportunity to be heard; and

(3) Provisions requiring the department to remove a person's name from an abuse and/or neglect registry maintained by the department if a substantiated allegation is successfully challenged in the board of review or in a court.

(d) Notwithstanding any provision of this code to the contrary:

(1) Where any allegation of abuse and/or neglect is substantiated and a petition for abuse and/or neglect could be filed and the department does not file a petition, all department records

related to the allegation shall be sealed one year after the substantiation determination, unless during the one-year period another allegation of child abuse and/or neglect against the person is substantiated: *Provided*, That the provisions of this subdivision do not apply to a person against whom an allegation is substantiated but the circumstances do not allow for the filing of a petition for abuse and/or neglect;

(2) Where an allegation of child abuse and/or neglect is substantiated and a petition is filed with the circuit court which does not end in an adjudication that abuse and/or neglect occurred, the allegation shall be considered to have been unsubstantiated.

(3)(A) Where an allegation of child abuse and/or neglect is substantiated and a judicial determination of child abuse and/or neglect is found, a person may petition the circuit court which found the person to be an abusing parent to have his or her department record sealed after no less than five years have elapsed since the finding of abuse and/or neglect is rendered: *Provided*, That a petition may not be filed if the person had been the subject of a substantiated allegation of abuse and/or neglect during the period of time after the finding and prior to the filing of the petition; and

(B) In its consideration of a petition filed under this subdivision, the court, in its discretion, may look at all relevant factors related to the petition, including, but not limited to, efforts at rehabilitation and family reunification.

(4) (A) Where an allegation of child abuse and/or neglect is substantiated by the department and a petition alleging child abuse and neglect was filed with the circuit court which does not end in an adjudication that abuse and/or neglect occurred due to a pre-adjudicatory alternative diversion, as provided in §49-4-607a of this code, the allegation shall be considered substantiated and a person may petition the circuit court, that had jurisdiction over the underlying juvenile abuse and neglect proceeding who ratified the pre-adjudicatory alternative diversion to have his or her department record sealed after the child subject to the guardianship attains the age of 18, but no petition shall be made less than five years having elapsed since the order dismissing the underlying abuse and neglect proceeding is entered: *Provided* That if the circuit judge of the

65 circuit presiding over the underlying juvenile abuse and neglect proceeding is not available to
66 preside over a petition to have his or her department record sealed, then the circuit court having
67 jurisdiction over the original child abuse and neglect proceeding shall generally preside: *Provided*
68 *however*, That a petition to have his or her department record sealed may not be filed if the person
69 has been the subject of a subsequent substantiated allegation of abuse and/or neglect during the
70 period of time after the removal of the child that necessitated the filing of the underlying juvenile
71 abuse and neglect proceeding and prior to the filing of the petition to have his or her department
72 record sealed; and

73 (B) In its consideration of a petition filed under this subdivision, the court, in its discretion,
74 may look at all relevant factors related to the petition, including, but not limited to the history of the
75 petitioner, the facts and circumstances that caused the pre-adjudicatory alternative diversion to be
76 entered into and the efforts to address these circumstances, efforts at rehabilitation and family
77 reunification

78 (e) The sealing of a record pursuant to subsection (d) of this section means that any inquiry
79 of the department about a person having a record of child abuse and/or neglect for purposes of
80 possible employment shall be answered in the negative.

81 (f) The secretary is directed to propose legislative rules pursuant to §29A-1-1 *et seq.* of this
82 code to effectuate the amendments to this section enacted during the regular session of the
83 Legislature, 2023.

§49-4-607a. Pre-Adjudicatory Alternative Diversion.

1 (a) Subsequent to the department or other reputable person's filing of a petition to a circuit
2 court alleging that a child is neglected or abused pursuant to the provisions of this article, a parent
3 whose child has been removed from his or her home, pursuant to §49-4-601a of this code, and
4 whose placement has been ratified by the circuit court, may file a written motion seeking a pre-
5 adjudicatory alternative diversion which would allow for the entry of an order of guardianship,

6 pursuant to §44-10-1 et seq. of this code, with the placement in lieu of a finding of child abuse and
7 neglect in the underlying case. A parent's written motion seeking a pre-adjudicatory alternative
8 diversion must contain stipulations to the factual basis that gave rise to the petition alleging child
9 abuse or neglect that necessitated the initial removal of the child. All adults having or asserting
10 parental rights to the child for which there is a motion for a pre-adjudicatory alternative diversion
11 must consent to the pre-adjudicatory alternative diversion and the proposed guardianship.

12 (b) A written motion for a pre-adjudicatory alternative diversion shall be made at least five
13 days prior to the scheduled adjudicatory hearing and served upon all parties, the guardian ad
14 litem, and the court.

15 (c) Upon receipt of the written motion seeking a pre-adjudicatory alternative diversion, the
16 court shall enter an order directing the department and the guardian ad litem to each review and
17 evaluate the contents of the motion and provide to the court a written report containing
18 recommendations as to whether a pre-adjudicatory alternative diversion is in the best interests of
19 the child. The department shall also provide in its written report to the circuit court whether it
20 consents to the proposed guardianship request contained within the parent's written motion for a
21 pre-adjudicatory alternative diversion and such consent by the department shall not be
22 unreasonably withheld. The required written reports contemplated in this subsection shall be filed
23 with the court within 30 days of the entry of said order.

24 (d) At the hearing on the parent's request for the pre-adjudicatory alternative diversion, the
25 parents shall be present and shall provide to the court stipulations to the factual basis that gave
26 rise to the petition alleging child abuse or neglect that necessitated the initial removal of the child.
27 A court shall enter an order granting the written request for a pre-adjudicatory alternative diversion
28 and authorizing the filing of a petition for the appointment of a guardian, pursuant to §44-10-1 et
29 seq. of this code, if the circuit court, after reviewing the parent's motion for a pre-adjudicatory
30 alternative diversion and the written reports of the guardian ad litem and the department,
31 determine the following:

32 (1) The guardian ad litem's written report recommends that the guardianship is in the best
33 interests of the child;

34 (2) The department's written report recommends that the guardianship is in the best
35 interests of the child;

36 (3) The department consents to the guardianship; and

37 (4) All adults having or asserting parental rights to the child consent to a pre-adjudicatory
38 alternative diversion and the pre-adjudicatory alternative diversion is in the best interest of the
39 child or the parents' rights have been previously terminated.

40 (e) When a motion for a pre-adjudicatory alternative diversion has been granted by the
41 circuit court the legal proceedings in the underlying juvenile abuse and neglect matter relating to
42 the minor children that are the subject of the pre-adjudicatory alternative diversion shall be
43 continued generally until the court receives an order indicating that a guardian has been appointed
44 pursuant to §44-10-1 et seq. of this code.

45 (f) All parties to the underlying child abuse and neglect proceeding shall be afforded the
46 right to legal counsel in the legal proceedings appointing a guardian contemplated in this section
47 and the court shall appoint the same legal counsel to represent the parties.

48 (g) The circuit court shall dismiss the underlying child abuse and neglect case once the
49 order appointing a guardian has been entered and provided to the circuit court having jurisdiction
50 over the underlying juvenile child abuse and neglect proceeding: *Provided*, That the circuit court
51 may order the department to continue to provide any services that are for the benefit of the child
52 that is subject to the guardianship if the court finds that continuation of these services are in the
53 best interest of the child.

54 (g) A pre-adjudicatory alternative diversion is not available to parents if a court determines:

55 (1) The parent has subjected the child, another child of the parent or any other child
56 residing in the same household or under the temporary or permanent custody of the parent to

aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(2) The parent has:

(A) Committed murder of the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(B) Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(C) Attempted or conspired to commit murder or voluntary manslaughter or been an accessory before or after the fact to either crime;

(D) Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;
or

(E) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent.

NOTE: The purpose of this bill is to create the process of obtaining and adjudicating a pre-adjudicatory alternative disposition.

This bill was recommended for introduction by the Joint Committee on Children and Families.

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