

# WEST VIRGINIA LEGISLATURE

## 2026 REGULAR SESSION

Introduced

### House Bill 5407

FISCAL  
NOTE

By Delegate Pinson

[Introduced February 10, 2026; referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-602 of the Code of West Virginia, 1931, as amended, relating  
2 to facilitating the participation of medical and mental health professionals in juvenile abuse  
3 and neglect cases.

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

#### **ARTICLE 4. COURT ACTIONS.**

**§49-4-602. Petition to court when child believed neglected or abused; temporary care, custody, and control of child at different stages of proceeding; temporary care; orders; emergency removal; when reasonable efforts to preserve family are unnecessary.**

1 (a)(1) *Temporary care, custody, and control upon filing of the petition.* -- Upon the filing of a  
2 petition, the court may order that the child alleged to be an abused or neglected child be delivered  
3 for not more than ten days into the care, custody, and control of the department or a responsible  
4 person who is not the custodial parent or guardian of the child, if it finds that:

5 (A) There exists imminent danger to the physical well-being of the child; and

6 (B) There are no reasonably available alternatives to removal of the child, including, but not  
7 limited to, the provision of medical, psychiatric, psychological or homemaking services in the  
8 child's present custody.

9 (2) Where the alleged abusing person, if known, is a member of a household, the court  
10 shall not allow placement pursuant to this section of the child or children in the home unless the  
11 alleged abusing person is or has been precluded from visiting or residing in the home by judicial  
12 order.

13 (3) In a case where there is more than one child in the home, or in the temporary care,  
14 custody or control of the alleged offending parent, the petition shall so state. Notwithstanding the  
15 fact that the allegations of abuse or neglect may pertain to less than all of those children, each  
16 child in the home for whom relief is sought shall be made a party to the proceeding. Even though  
17 the acts of abuse or neglect alleged in the petition were not directed against a specific child who is

18 named in the petition, the court shall order the removal of the child, pending final disposition, if it  
19 finds that there exists imminent danger to the physical well-being of the child and a lack of  
20 reasonable available alternatives to removal.

21 (4) The initial order directing custody shall contain an order appointing counsel and  
22 scheduling the preliminary hearing, and upon its service shall require the immediate transfer of  
23 care, custody, and control of the child or children to the department or a responsible relative, which  
24 may include any parent, guardian, or other custodian. The court order shall state:

25 (A) That continuation in the home is contrary to the best interests of the child and why; and

26 (B) Whether or not the department made reasonable efforts to preserve the family and  
27 prevent the placement or that the emergency situation made those efforts unreasonable or  
28 impossible. The order may also direct any party or the department to initiate or become involved in  
29 services to facilitate reunification of the family.

30 (C) That within 30 days after a child is placed in the custody of the department, the  
31 department shall identify and execute a release of records for each medical, dental, and mental  
32 health provider of the child to his or her school counselor, for the purpose of collaboration among  
33 counselors surrounding the child's case.

34 (b) *Temporary care, custody and control at preliminary hearing.* -- Whether or not the court  
35 orders immediate transfer of custody as provided in subsection (a) of this section, if the facts  
36 alleged in the petition demonstrate to the court that there exists imminent danger to the child, the  
37 court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If  
38 the court finds at the preliminary hearing that there are no alternatives less drastic than removal of  
39 the child and that a hearing on the petition cannot be scheduled in the interim period, the court may  
40 order that the child be delivered into the temporary care, custody, and control of the department or  
41 a responsible person or agency found by the court to be a fit and proper person for the temporary  
42 care of the child for a period not exceeding sixty days. The court order shall state:

43 (1) That continuation in the home is contrary to the best interests of the child and set forth

44 the reasons therefor;

45 (2) Whether or not the department made reasonable efforts to preserve the family and to  
46 prevent the child's removal from his or her home;

47 (3) Whether or not the department made reasonable efforts to preserve the family and to  
48 prevent the placement or that the emergency situation made those efforts unreasonable or  
49 impossible;

50 (4) Whether or not the department made reasonable accommodations in accordance with  
51 the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*, to parents with disabilities  
52 in order to allow them meaningful access to reunification and family preservation services; and

53 (5) What efforts should be made by the department, if any, to facilitate the child's return  
54 home. If the court grants an improvement period as provided in section six hundred ten of this  
55 article, the sixty-day limit upon temporary custody is waived.

56 (c) *Emergency removal by department during pendency of case.* -- Regardless of whether  
57 the court has previously granted the department care and custody of a child, if the department  
58 takes physical custody of a child during the pendency of a child abuse and neglect case (also  
59 known as removing the child) due to a change in circumstances and without a court order issued at  
60 the time of the removal, the department must immediately notify the court and a hearing shall take  
61 place within ten days to determine if there is imminent danger to the physical well-being of the  
62 child, and there is no reasonably available alternative to removal of the child. The court findings  
63 and order shall be consistent with subsections (a) and (b) of this section.

64 (d) *Situations when reasonable efforts to preserve the family are not required.* -- For  
65 purposes of the court's consideration of temporary custody pursuant to subsection (a), (b), or (c) of  
66 this section, the department is not required to make reasonable efforts to preserve the family if the  
67 court determines:

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

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

72 (2) The parent has:

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

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

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

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

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

87 (F) Has been required by state or federal law to register with a sex offender registry, and  
88 the court has determined in consideration of the nature and circumstances surrounding the prior  
89 charges against that parent, that the child's interests would not be promoted by a preservation of  
90 the family; or

91 (3) The parental rights of the parent to another child have been terminated involuntarily.

NOTE: The purpose of this bill is to facilitate the participation of medical, dental, and mental health providers in juvenile abuse and neglect cases.

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