

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **House Bill 5443**

**FISCAL  
NOTE**

By Delegate Burkhammer

[Introduced February 11, 2026; referred to the  
Committee on Finance]

1 A BILL to amend and reenact §29-21-13a, §49-1-201, §49-4-405, §49-4-601, §49-4-602, §49-4-  
 2 604, §49-4-608, and §49-4-610 of the Code of West Virginia, 1931, as amended, relating  
 3 to increasing the compensation for legal counsel and other professionals involved in  
 4 appointed cases within the Public Defender Services system; requiring certain reporting by  
 5 the Public Defender Services relating to panel attorneys; adding definitions relevant to  
 6 child abuse and neglect proceedings; allowing court appointed assistant guardians ad  
 7 litem into the MDT; creating and appointing assistant guardians ad litem; expanding  
 8 situations where reasonable efforts to preserve the family are not required to include  
 9 situations where a parent is consensually terminated of their parental rights; and  
 10 expanding what must be contained in the court’s orders in child abuse and neglect cases.

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

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

**ARTICLE            21.            PUBLIC            DEFENDER            SERVICES.**  
**§29-21-13a.        Compensation        and        expenses        for        panel        attorneys.**

1            (a) All panel attorneys shall maintain detailed and accurate records of the time expended  
 2 and expenses incurred on behalf of eligible clients, and which records are to be maintained in a  
 3 form that will enable the attorney to determine for any day the periods of time expended in tenths of  
 4 an hour on behalf of any eligible client and the total time expended in tenths of an hour on that day  
 5 on behalf of all eligible clients: *Provided*, That in no event may panel attorneys be required to  
 6 maintain or submit the actual start and finish times of work performed.

7            (b) Upon completion of each case, exclusive of appeal, panel attorneys shall submit to  
 8 Public Defender Services a voucher for services. Public Defender Services shall electronically  
 9 acknowledge the submission of a voucher. Claims for fees and expense reimbursements shall be  
 10 submitted to Public Defender Services on forms approved by the executive director. The executive  
 11 director shall establish guidelines for the submission of vouchers and claims for fees and expense

12 reimbursements under this section. Claims submitted more than 90 business days after the last  
13 date of service shall be rejected unless, for good cause, the appointing court authorizes in writing  
14 an extension.

15 (c) Public Defender Services shall review the voucher to determine if the time and expense  
16 claims are reasonable, necessary, and valid. A voucher found to be correct shall be processed and  
17 payment promptly directed within 45 business days of submission of the voucher.

18 (d)(1) If Public Defender Services rejects a voucher, the attorney submitting the voucher  
19 shall be notified electronically of the rejection and provided detailed reasons for the rejection within  
20 30 business days of submission of the voucher. The attorney may resubmit the voucher  
21 accompanied by copies of his or her records supporting the voucher and certification from the  
22 appointing court that the services or expenses were performed or incurred, and were reasonable  
23 and necessary, within 15 business days of receipt of notification. The executive director shall make  
24 a final agency decision regarding the rejection of the voucher within 15 business days of receipt of  
25 the submitted records and certification. Under no circumstances may the executive director have  
26 the authority or require any panel attorney to submit privileged client information.

27 (2) If the final agency decision is to reject the voucher, Public Defender Services shall  
28 request review of the final agency decision by motion to the appointing court filed within 15  
29 business days of notice of the final agency decision. After a hearing providing the attorney and  
30 Public Defender Services an opportunity to be heard, the appointing court shall have final authority  
31 to resolve the issue of payment and to order all remedies available under the West Virginia Rules  
32 of Civil Procedure.

33 (e) If Public Defender Services reduces the amount of compensation claimed or  
34 reimbursement requested, the attorney submitting the voucher shall be notified electronically of  
35 the reduction and detailed reasons for the reduction within 30 business days of the submission of  
36 the voucher. The attorney may:

37 (1) Agree with the reduction and certify his or her agreement electronically to Public

38 Defender Services which shall then proceed to process payment; or

39 (2) Disagree with the reduction and request payment of the reduced amount while  
40 preserving the ability to contest the reduction;

41 (3) An attorney proceeding pursuant to this subsection shall inform Public Defender  
42 Services of his or her decision by electronic means within 15 business days of receipt of the notice  
43 of reduction. If there is no communication from the attorney within 15 business days of receipt of  
44 the notice of reduction, then the reduction is deemed to be accepted by the attorney;

45 (4) The attorney may submit records and certification from the appointing court that the  
46 services or expenses reflected in the amount reduced were performed or incurred and were  
47 reasonable and necessary. The executive director shall then make a final agency decision  
48 regarding the reduction within 15 business days of receipt of the submitted records and  
49 certification. Under no circumstances may the executive director have the authority to require any  
50 panel attorney to submit privileged client information;

51 (5) If the attorney disagrees with the final agency decision, and the attorney and the  
52 executive director cannot reach an agreement regarding the reduction within 15 business days of  
53 the receipt of the notice of the final agency decision, Public Defender Services shall request review  
54 of the final agency decision by motion to the appointing court filed within 15 business days of  
55 notice of the final agency decision. After a hearing providing the attorney and Public Defender  
56 Services an opportunity to be heard, the appointing court shall have final authority to resolve the  
57 issue of payment, and to order all remedies available under the West Virginia Rules of Civil  
58 Procedure;

59 (6) If there is no communication from Public Defender Services within 30 business days of  
60 the submission of the voucher, the voucher is deemed to have been approved for payment without  
61 reduction.

62 (f) Notwithstanding any provisions of this code to the contrary, the executive director may  
63 employ in-house counsel to represent Public Defender Services in hearings held pursuant to this

64 article.

65 (g) Except for the emergency rule-making provision set forth in §29-21-6(h) of this code,  
66 the provisions of the amendments to this article enacted during the 2019 regular session of the  
67 Legislature shall be effective July 1, 2019.

68 (h) Notwithstanding any other provision of this section to the contrary, Public Defender  
69 Services may pay by direct bill, prior to the completion of the case, litigation expenses incurred by  
70 attorneys appointed under this article.

71 (i) Notwithstanding any other provision of this section to the contrary, a panel attorney may  
72 be compensated for services rendered and reimbursed for expenses incurred prior to the  
73 completion of the case where: (1) More than six months have expired since the commencement of  
74 the panel attorney's representation in the case; and (2) no prior payment of attorney fees has been  
75 made to the panel attorney by Public Defender Services during the case. The executive director, in  
76 his or her discretion, may authorize periodic payments where ongoing representation extends  
77 beyond six months in duration. The amounts of any fees or expenses paid to the panel attorney on  
78 an interim basis, when combined with any amounts paid to the panel attorney at the conclusion of  
79 the case, shall not exceed the limitations on fees and expenses imposed by this section.

80 (j) In each case in which a panel attorney provides legal representation under this article,  
81 and in each appeal after conviction in circuit court, the panel attorney shall be compensated at the  
82 following rates for actual and necessary time expended for services performed and expenses  
83 incurred subsequent to the effective date of this article:

84 ~~(1) For attorney's work performed out of court, compensation shall be at the rate of \$60 per~~  
85 ~~hour.~~

86 ~~Out-of-court work includes, but is not limited to, travel, interviews of clients or witnesses,~~  
87 ~~preparation of pleadings, and prehearing or pretrial research;~~

88 ~~(2) For attorney's work performed in court, compensation shall be at the rate of \$80 per~~  
89 ~~hour.~~

90 ~~In-court work includes, but is not limited to, all time spent awaiting hearing or trial before a~~  
91 ~~judge, magistrate, special master, or other judicial officer;~~

92 (1) All legal services performed by a panel attorney shall be compensated at a rate of not  
93 less than \$100 per hour. No later than June 15 of each year, the West Virginia Public Defender  
94 Services shall publish on their website the rate of panel attorney compensation for the next fiscal  
95 year.

96 ~~(3)~~ (2) Compensation for legal services performed for a panel attorney by a paralegal out-  
97 of-court is to be calculated using a rate of not less than \$20 per hour and no such compensation is  
98 to be paid for in-court services performed for a panel attorney by a paralegal absent prior approval  
99 of the circuit court before whom the panel attorney is appearing and subject to maximum  
100 reimbursement amounts set by agency rule. No later than June 15 of each year, the West Virginia  
101 Public Defender Services shall publish on their website the rate of paralegal compensation for the  
102 next fiscal year.

103 (3) Compensation for services performed by an assistant guardian ad litem shall be at a  
104 rate of not less than \$40 per hour. No later than June 15 of each year, the West Virginia Public  
105 Defender Services shall publish on their website the rate of assistant guardian ad litem  
106 compensation for the next fiscal year.

107 (4) The maximum amount of compensation for out-of-court and in-court work under this  
108 subsection is as follows: For proceedings of any kind involving felonies for which a penalty of life  
109 imprisonment may be imposed, the amount as the court may approve; for all other eligible  
110 proceedings, ~~\$4,500~~ \$6,000 unless the court, for good cause shown, approves payment of a  
111 larger sum.

112 (k) Actual and necessary expenses incurred in providing legal representation for  
113 proceedings of any kind involving felonies for which a penalty of life imprisonment may be  
114 imposed, including, but not limited to, expenses for travel, transcripts, salaried or contracted  
115 investigative services, and expert witnesses, shall be reimbursed in an amount as the court may

116 approve. For all other eligible proceedings, actual and necessary expenses incurred in providing  
117 legal representation, including, but not limited to, expenses for travel, transcripts, salaried or  
118 contracted investigative services and expert witnesses, shall be reimbursed to a maximum of  
119 \$2,500 unless the court, for good cause shown, approves reimbursement of a larger sum.

120 (l) Expense vouchers shall specifically set forth the nature, amount, and purpose of  
121 expenses incurred and shall provide receipts, invoices, or other documentation required by the  
122 executive director and the State Auditor as follows:

123 (1) Reimbursement of expenses for production of transcripts of proceedings reported by a  
124 court reporter is limited to the cost per original page and per copy page as set forth in §51-7-4 of  
125 this code;

126 (2) There may be no reimbursement of expenses for or production of a transcript of a  
127 preliminary hearing before a magistrate or juvenile referee, or of a magistrate court trial, where the  
128 hearing or trial has also been recorded electronically in accordance with the provisions of §50-5-8  
129 of this code or court rule;

130 (3) Reimbursement of the expense of an appearance fee for a court reporter who reports a  
131 proceeding other than one described in subdivision (2) of this subsection is limited to \$25. Where a  
132 transcript of a proceeding is produced, there may be no reimbursement for the expense of any  
133 appearance fee;

134 (4) Except for the appearance fees provided in this subsection, there may be no  
135 reimbursement for hourly court reporters' fees or fees for other time expended by the court  
136 reporter, either at the proceeding or traveling to or from the proceeding;

137 (5) Reimbursement of the cost of transcription of tapes electronically recorded during  
138 preliminary hearings or magistrate court trials is limited to \$1 per page;

139 (6) Reimbursement for any travel expense incurred in an eligible proceeding is limited to  
140 the rates for the reimbursement of travel expenses established by rules promulgated by the  
141 Governor pursuant to the provisions of §12-8-11 of this code and administered by the Secretary of

142 the Department of Administration pursuant to the provisions of §5A-3-48 of this code;

143 (7) Reimbursement for investigative services ~~is limited to~~ shall be at a rate of not less than  
144 \$30 per hour for work performed by an investigator. No later than June 15 of each year, the West  
145 Virginia Public Defender Services shall publish on their website the rate of reimbursement for  
146 investigative services for the next fiscal year.

147 (m) For purposes of compensation under this section, an appeal from magistrate court to  
148 circuit court, an appeal from a final order of the circuit court, or a proceeding seeking an  
149 extraordinary remedy made to the Supreme Court of Appeals shall be considered a separate  
150 case.

151 (n) Vouchers submitted under this section shall specifically set forth the nature of the  
152 service rendered, the stage of proceeding or type of hearing involved, the date and place the  
153 service was rendered, and the amount of time expended in each instance. All time claimed on the  
154 vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible client  
155 for which services were rendered is one of several charges involving multiple warrants or  
156 indictments, the voucher shall indicate the fact and sufficiently identify the several charges so as to  
157 enable Public Defender Services to avoid a duplication of compensation for services rendered.  
158 The executive director shall refuse to requisition payment for any voucher which is not in  
159 conformity with the recordkeeping, compensation, or other provisions of this article or the voucher  
160 guidelines established issued pursuant to this article and in such circumstance shall return the  
161 voucher to the court or to the service provider for further review or correction.

162 (o) Vouchers submitted under this section shall be reimbursed within 90 days of receipt.  
163 Reimbursements after 90 days shall bear interest from the 91st day at the legal rate in effect for the  
164 calendar year in which payment is due.

165 (p) Vouchers submitted for fees and expenses involving child abuse and neglect cases  
166 shall be processed for payment before processing vouchers submitted for all other cases.

167 (q) Upon a dismissal of or a finding of not guilty concerning a criminal charge, should the

168 charge or charges for which the indigent defendant was afforded counsel qualify for an  
169 expungement of charges under §61-11-25 of this code, the defendant shall be afforded continued  
170 representation upon the terms specified in this section. The Panel Attorney shall include the  
171 services performed by panel attorneys in regard to an expungement on the same voucher or a  
172 subsequent voucher submitted concerning the same case number as the one submitted to Public  
173 Defender Services for the underlying criminal charge or charges. The maximum amount of  
174 compensation for out-of-court and in-court work under this section shall be limited to \$1,000 for  
175 expungement services in addition to the limits imposed on the underlying criminal charge or  
176 charges, unless the court, for good cause shown, approves payment of a larger sum. The actual  
177 and necessary expenses incurred in providing legal representation for expungement proceedings  
178 under this section shall be reimbursed to a maximum of \$500 unless the court, for good cause  
179 shown, approves reimbursement of a larger sum.

180 (r) Beginning on December 1, 2026, Public Defender Services shall annually compile and  
181 summarize vouchers submitted by panel attorneys serving as guardians ad litem and assistant  
182 guardians ad litem for the courts in this state. Each annual summary shall be provided to the  
183 Legislative Oversight Commission on Health and Human Resources, the Foster Care  
184 Ombudsman, and the West Virginia Supreme Court of Appeals and include the following:

185 (1) The average per-case number of multidisciplinary team meetings attended by  
186 appointed guardians ad litem and assistant guardians ad litem from the date of initial appointment  
187 until permanency for the child has been achieved;

188 (2) The average number of cases for which a panel attorney has served as a guardian ad  
189 litem;

190 (3) The average length of time that a child abuse or neglect proceeding lasts, from the date  
191 of the initial appointment of a guardian ad litem until permanency for the child is achieved.

192 (4) The average number of in-person visits or conferences that appointed guardians ad  
193 litem and assistant guardians ad litem have with their clients, or the client's parents or caretakers,

194 when appropriate. The annual summary shall also include an aggregate number of cases for  
195 which an in-person visit was completed, as well as an aggregate number of cases for which an in-  
196 person visit was not completed;

197 (5) The average number of legal services hours itemized and billed in each case by an  
198 appointed panel attorney serving as a guardian ad litem from the date of initial appointment until  
199 permanency for the child is achieved; and

200 (6) The average number of travel hours itemized and billed in each case by an appointed  
201 panel attorney serving as a guardian ad litem from the date of initial appointment until permanency  
202 for the child is achieved: *Provided*, That nothing in this subsection shall be construed to required  
203 disclosure by any guardian ad litem or assistant guardian ad litem of any information protected by  
204 attorney-client privilege.

## CHAPTER 49. CHILD WELFARE.

### ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

#### §49-1-201. Definitions related, but not limited to, child abuse and neglect.

1 When used in this chapter, terms defined in this section have the meanings ascribed to  
2 them that relate to, but are not limited to, child abuse and neglect, except in those instances where  
3 a different meaning is provided or the context in which the word is used clearly indicates that a  
4 different meaning is intended.

5 "Abandonment" means any conduct that demonstrates the settled purpose to forego the  
6 duties and parental responsibilities to the child;

7 "Abused child" means:

8 (1) A child whose health or welfare is being harmed or threatened by:

9 (A) A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to  
10 inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury  
11 upon the child or another child in the home. Physical injury may include an injury to the child as a

12 result of excessive corporal punishment;

13 (B) Sexual abuse or sexual exploitation;

14 (C) The sale or attempted sale of a child by a parent, guardian, or custodian in violation of  
15 §61-2-14h of this code;

16 (D) Domestic violence as defined in §48-27-202 of this code; or

17 (E) Human trafficking or attempted human trafficking in violation of §61-14-2 of this code.

18 (2) A child conceived as a result of sexual assault, as that term is defined in this section, or  
19 as a result of the violation of a criminal law of another jurisdiction which has the same essential  
20 elements: Provided, That no victim of sexual assault may be determined to be an abusive parent  
21 as that term is defined in this section, based upon being a victim of sexual assault.

22 "Abusing parent" means a parent, guardian, or other custodian, regardless of his or her  
23 age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as  
24 alleged in the petition charging child abuse or neglect.

25 "Assistant guardian ad litem" means an individual appointed by the court in a juvenile  
26 abuse and neglect proceeding who is supervised by and reports to the guardian ad litem on the  
27 protected juvenile's current placement, situation, and living conditions: *Provided*, That the  
28 assistant guardian ad litem may not have a personal interest in the proceeding. The duties of an  
29 assistant guardian ad litem may include, but are not limited to conducting visits, speaking to or  
30 meeting directly with the child or children who are represented by the guardian ad litem, which may  
31 occur without the guardian ad litem after an initial meeting, providing periodic reports to the  
32 guardian ad litem, and attending hearings and multidisciplinary team meetings.

33 "Battered parent" for the purposes of §49-4-601 *et seq.* of this code means a respondent  
34 parent, guardian, or other custodian who has been adjudicated by the court to have not condoned  
35 the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due  
36 to being the victim of domestic violence as defined by §48-27-202 of this code, which was  
37 perpetrated by the same person or persons determined to have abused or neglected the child or

38 children.

39 "Child abuse and neglect" or "child abuse or neglect" means any act or omission that  
40 creates an abused child or a neglected child as those terms are defined in this section.

41 "Child abuse and neglect services" means social services which are directed toward:

42 (A) Protecting and promoting the welfare of children who are abused or neglected;

43 (B) Identifying, preventing, and remedying conditions which cause child abuse and  
44 neglect;

45 (C) Preventing the unnecessary removal of children from their families by identifying family  
46 problems and assisting families in resolving problems which could lead to a removal of children  
47 and a breakup of the family;

48 (D) In cases where children have been removed from their families, providing time-limited  
49 reunification services to the children and the families so as to reunify those children with their  
50 families, or some portion of the families;

51 (E) Placing children in suitable adoptive homes when reunifying the children with their  
52 families, or some portion of the families, is not possible or appropriate; and

53 (F) Assuring the adequate care of children or juveniles who have been placed in the  
54 custody of the department or third parties.

55 "Condition requiring emergency medical treatment" means a condition which, if left  
56 untreated for a period of a few hours, may result in permanent physical damage; that condition  
57 includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture,  
58 unconsciousness, and evidence of ingestion of significant amounts of a poisonous substance.

59 "Guardian ad litem" means an attorney appointed by the court to represent the best  
60 interests of the child or children in a juvenile abuse and neglect proceeding.

61 "Imminent danger to the physical well-being of the child" means an emergency situation in  
62 which the welfare or the life of the child is threatened. These conditions may include an emergency  
63 situation when there is reasonable cause to believe that any child in the home is or has been

64 sexually abused or sexually exploited, or reasonable cause to believe that the following conditions  
65 threaten the health, life, or safety of any child in the home:

66 (A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling, babysitter, or  
67 other caretaker;

68 (B) A combination of physical and other signs indicating a pattern of abuse which may be  
69 medically diagnosed as battered child syndrome;

70 (C) Nutritional deprivation;

71 (D) Abandonment by the parent, guardian, or custodian;

72 (E) Inadequate treatment of serious illness or disease;

73 (F) Substantial emotional injury inflicted by a parent, guardian, or custodian;

74 (G) Sale or attempted sale of the child by the parent, guardian, or custodian;

75 (H) The parent, guardian, or custodian's abuse of alcohol or drugs or other controlled  
76 substance as defined in §60A-1-101 of this code, has impaired his or her parenting skills to a  
77 degree as to pose an imminent risk to a child's health or safety; or

78 (I) Any other condition that threatens the health, life or safety of any child in the home.

79 "Neglected child" means a child:

80 (A) Whose physical or mental health is harmed or threatened by a present refusal, failure  
81 or inability of the child's parent, guardian, or custodian to supply the child with necessary food,  
82 clothing, shelter, supervision, medical care, or education, when that refusal, failure, or inability is  
83 not due primarily to a lack of financial means on the part of the parent, guardian, or custodian;

84 (B) Who is presently without necessary food, clothing, shelter, medical care, education, or  
85 supervision because of the disappearance or absence of the child's parent or custodian; or

86 (C) "Neglected child" does not mean a child whose education is conducted within the  
87 provisions of §18-8-1 *et seq.* of this code.

88 "Parent Resource Navigator" means an individual established through the Court  
89 Improvement Program (CIP) or Public Defender Services (PDS) model who is assisting a parent

90 or parents through requirements to be unified or reunified with their child or children.

91 "Petitioner or copetitioner" means the department or any reputable person who files a child  
92 abuse or neglect petition pursuant to §49-4-601 *et seq.* of this code.

93 "Permanency plan" means the part of the case plan which is designed to achieve a  
94 permanent home for the child in the least restrictive setting available.

95 "Respondent" means all parents, guardians, and custodians identified in the child abuse  
96 and neglect petition who are not petitioners or copetitioners.

97 "Sexual abuse" means:

98 (A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by §61-8c-3  
99 of this code, which a parent, guardian, or custodian engages in, attempts to engage in, or  
100 knowingly procures another person to engage in, with a child notwithstanding the fact that for a  
101 child who is less than 16 years of age, the child may have willingly participated in that conduct or  
102 the child may have suffered no apparent physical, mental, or emotional injury as a result of that  
103 conduct or, for a child 16 years of age or older, the child may have consented to that conduct or the  
104 child may have suffered no apparent physical injury or mental, or emotional injury as a result of  
105 that conduct;

106 (B) Any conduct where a parent, guardian, or custodian displays his or her sex organs to a  
107 child, or procures another person to display his or her sex organs to a child, for the purpose of  
108 gratifying the sexual desire of the parent, guardian, or custodian, of the person making that  
109 display, or of the child, or for the purpose of affronting or alarming the child; or

110 (C) Any of the offenses proscribed in §61-8b-7, §61-8b-8, or §61-8b-9 of this code.

111 "Sexual assault" means any of the offenses proscribed in §61-8b-3, §61-8b-4, or §61-8b-5  
112 of this code.

113 "Sexual contact" means sexual contact as that term is defined in §61-8b-1 of this code.

114 "Sexual exploitation" means an act where:

115 (A) A parent, custodian, or guardian, whether for financial gain or not, persuades, induces,

116 entices, or coerces a child to engage in sexually explicit conduct as that term is defined in §61-8c-1  
117 of this code;

118 (B) A parent, guardian, or custodian persuades, induces, entices, or coerces a child to  
119 display his or her sex organs for the sexual gratification of the parent, guardian, custodian, or a  
120 third person, or to display his or her sex organs under circumstances in which the parent,  
121 guardian, or custodian knows that the display is likely to be observed by others who would be  
122 affronted or alarmed; or

123 (C) A parent, guardian, or custodian knowingly maintains or makes available a child for the  
124 purpose of engaging the child in commercial sexual activity in violation of §61-14-5 of this code.

125 "Sexual intercourse" means sexual intercourse as that term is defined in §61-8b-1 of this  
126 code.

127 "Sexual intrusion" means sexual intrusion as that term is defined in §61-8b-1 of this code.

128 "Serious physical abuse" means bodily injury which creates a substantial risk of death,  
129 causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or  
130 impairment of the function of any bodily organ.

1

**§49-4-405. Multidisciplinary treatment planning process involving child abuse and neglect;  
team membership; duties; reports; admissions.**

1 (a) Within 30 days of the initiation of a judicial proceeding pursuant to part six of this article,  
2 the department shall convene a multidisciplinary treatment team to assess, plan, and implement a  
3 comprehensive, individualized service plan for children who are victims of abuse or neglect and  
4 their families. The multidisciplinary team shall obtain and utilize any assessments for the children  
5 or the adult respondents that it deems necessary to assist in the development of that plan.

6 (b) In a case initiated pursuant to part six of this article, the treatment team consists of:

7 (1) The child or family's case manager in the department;

8 (2) The adult respondent or respondents;

- 9 (3) The child's parent or parents, guardians, any copetitioners, custodial relatives of the  
10 child, foster or preadoptive parents;
- 11 (4) Any attorney representing an adult respondent or other member of the treatment team;
- 12 (5) The child's counsel or the guardian ad litem;
- 13 (6) The prosecuting attorney or his or her designee;
- 14 (7) A member of a child advocacy center when the child has been processed through the  
15 child advocacy center program or programs or it is otherwise appropriate that a member of the  
16 child advocacy center participate;
- 17 (8) Any court-appointed special advocate assigned to a case;
- 18 (9) Any other person entitled to notice and the right to be heard;
- 19 (10) An appropriate school official;
- 20 (11) A parent resource navigator;
- 21 (12) A court-appointed assistant guardian ad litem;
- 22 ~~(12)~~ (13) The managed care case coordinator; and
- 23 ~~(13)~~ (14) Any other person or agency representative who may assist in providing  
24 recommendations for the particular needs of the child and family, including domestic violence  
25 service providers.

26 The child may participate in multidisciplinary treatment team meetings if the child's  
27 participation is deemed appropriate by the multidisciplinary treatment team. Unless otherwise  
28 ordered by the court, a party whose parental rights have been terminated and his or her attorney  
29 may not be given notice of a multidisciplinary treatment team meeting and do not have the right to  
30 participate in any treatment team meeting.

31 (c) Prior to disposition in each case in which a treatment planning team has been  
32 convened, the team shall advise the court as to the types of services the team has determined are  
33 needed and the type of placement, if any, which will best serve the needs of the child. If the team  
34 determines that an out-of-home placement will best serve the needs of the child, the team shall

35 first consider placement with appropriate relatives then with foster care homes, facilities, or  
36 programs located within the state. The team may only recommend placement in an out-of-state  
37 facility if it concludes, after considering the best interests and overall needs of the child, that there  
38 are no available and suitable in-state facilities which can satisfactorily meet the specific needs of  
39 the child.

40 (d) The multidisciplinary treatment team shall submit written reports to the court as  
41 required by the rules governing this type of proceeding or by the court and shall meet as often as  
42 deemed necessary but at least every three months until the case is dismissed from the docket of  
43 the court. The multidisciplinary treatment team shall be available for status conferences and  
44 hearings as required by the court.

45 (e) If a respondent or copetitioner admits the underlying allegations of child abuse or  
46 neglect, or both abuse and neglect, in the multidisciplinary treatment planning process, his or her  
47 statements may not be used in any subsequent criminal proceeding against him or her, except for  
48 perjury or false swearing.

**§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, by initial  
13 order, set a time and place for a hearing and shall appoint counsel for the child. When there is an  
14 order for temporary custody pursuant to this article, the preliminary hearing shall be held within ten  
15 days of the order continuing or transferring custody, unless a continuance for a reasonable time is  
16 granted to a date certain, for good cause shown. In such initial order, the court shall certify that all  
17 appointed counsel have met all educational requirements to serve in their respective roles. The  
18 court shall further outline the duties, obligations, and responsibilities of the guardian ad litem,  
19 including requiring regular in-person contact with the minor child or children, and shall require that  
20 the guardian ad litem adhere to the requirements of the Rules of Procedure for Child Abuse and  
21 Neglect Proceedings, the Rules of Professional Conduct, and such other rules as the West  
22 Virginia Supreme Court of Appeals may promulgate, including any appendices thereto.

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

26 (e) Notice of hearing. —

27 (1) The petition and notice of the hearing shall be served upon both parents and any other  
28 custodian, giving to the parents or custodian at least five days' actual notice of a preliminary  
29 hearing and at least ten days' notice of any other hearing.

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

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

36 certificate shall be filed as proof of the service with the clerk of the circuit court.

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

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

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

44 (f) Right to counsel; discretionary appointment of assistant guardian ad litem. —

45 (1) In any proceeding under this article, the child has the right to be represented by a  
46 guardian ad litem, legal counsel, or both, at every stage of the proceedings, and the same shall be  
47 appointed.

48 (2) In any proceeding under this article, his or her a child's parents and his or her legally  
49 established custodian or other persons standing in loco parentis to him or her has the right to be  
50 represented by counsel at every stage of the proceedings and shall be informed by the court of  
51 their right to be so represented and that if they cannot pay for the services of counsel, that counsel  
52 will be appointed.

53 ~~(2)~~ (3) Counsel shall be appointed in the initial order. For parents, legal guardians, and  
54 other persons standing in loco parentis, the representation may only continue after the first  
55 appearance if the parent or other persons standing in loco parentis cannot pay for the services of  
56 counsel.

57 ~~(3)~~ (4) Counsel for other parties shall only be appointed upon request for appointment of  
58 counsel. If the requesting parties have not retained counsel and cannot pay for the services of  
59 counsel, the court shall, by order entered of record, appoint an attorney or attorneys to represent  
60 the other party or parties and so inform the parties.

61 ~~(4)~~ (5) Under no circumstances may the same attorney represent both the child and the

62 other party or parties, nor may the same attorney represent both parents or custodians. However,  
63 one attorney may represent both parents or custodians where both parents or guardians consent  
64 to this representation after the attorney fully discloses to the client the possible conflict and where  
65 the attorney assures the court that she or he is able to represent each client without impairing her  
66 or his professional judgment; however, if more than one child from a family is involved in the  
67 proceeding, one attorney may represent all the children.

68 ~~(5)~~ (6) A parent who is a copetitioner is entitled to his or her own attorney. The court may  
69 allow to each attorney so appointed a fee in the same amount which appointed counsel can  
70 receive in felony cases.

71 (7) Upon its own motion or request of the attorney appointed, or to be appointed, guardian  
72 ad litem, the court may appoint an assistant guardian ad litem may be appointed to assist the  
73 guardian ad litem in carrying out his or her duties.

74 (g) Continuing education

75 (1) For for counsel. — Any attorney representing a party under this article shall receive a  
76 minimum of eight hours of continuing legal education training per reporting period on child abuse  
77 and neglect procedure and practice. In addition to this requirement, any attorney appointed to  
78 represent a child must first complete training on representation of children that is approved by the  
79 administrative office of the Supreme Court of Appeals. The Supreme Court of Appeals shall  
80 develop procedures for approval and certification of training required under this section. Where no  
81 attorney has completed the training required by this subsection, the court shall appoint a  
82 competent attorney with demonstrated knowledge of child welfare law to represent the parent or  
83 child. Any attorney appointed pursuant to this section shall perform all duties required of an  
84 attorney licensed to practice law in the State of West Virginia.

85 (2) For assistant guardian ad litem. – Any person appointed to serve as an assistant  
86 guardian ad litem for a child must first complete training on the duties of an assistant guardian ad  
87 litem that is approved by the administrative office of the Supreme Court of Appeals. The Supreme

88 Court of Appeals shall develop procedures for approval and certification of assistant guardians ad  
89 litem, which shall include, at a minimum, a review of the person's criminal and CPS history.

90 (h) Right to be heard. — In any proceeding pursuant to this article, the party or parties  
91 having custodial or other parental rights or responsibilities to the child shall be afforded a  
92 meaningful opportunity to be heard, including the opportunity to testify and to present and cross-  
93 examine witnesses. Foster parents, preadoptive parents, and relative caregivers shall also have a  
94 meaningful opportunity to be heard.

95 (i) Findings of the court. — Where relevant, the court shall consider the efforts of the  
96 department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing,  
97 the court shall make a determination based upon the evidence and shall make findings of fact and  
98 conclusions of law as to whether the child is abused or neglected and whether the respondent is  
99 abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the  
100 order of the court. The findings must be based upon conditions existing at the time of the filing of  
101 the petition and proven by clear and convincing evidence.

102 (j) Priority of proceedings. — Any petition filed and any proceeding held under this article  
103 shall, to the extent practicable, be given priority over any other civil action before the court, except  
104 proceedings under section three hundred nine, article twenty-seven, chapter forty-eight of this  
105 code and actions in which trial is in progress. Any petition filed under this article shall be docketed  
106 immediately upon filing. Any hearing to be held at the end of an improvement period and any other  
107 hearing to be held during any proceedings under this article shall be held as nearly as practicable  
108 on successive days and, with respect to the hearing to be held at the end of an improvement  
109 period, shall be held as close in time as possible after the end of the improvement period and shall  
110 be held within thirty days of the termination of the improvement period.

111 (k) Procedural safeguards. — The petition may not be taken as confessed. A transcript or  
112 recording shall be made of all proceedings unless waived by all parties to the proceeding. The  
113 rules of evidence shall apply. Following the court's determination, it shall be inquired of the parents

114 or custodians whether or not appeal is desired and the response transcribed. A negative response  
115 may not be construed as a waiver. The evidence shall be transcribed and made available to the  
116 parties or their counsel as soon as practicable, if the same is required for purposes of further  
117 proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall  
118 furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating  
119 that he or she cannot pay therefor.

120 (l) CASA. — The department, guardian ad litem, or any parent as defined in §49-1-204 of  
121 this code who is a party to a proceeding instituted pursuant to the provisions of this section, may, in  
122 accordance with the Rules of Procedure for Child Abuse and Neglect Proceedings, request the  
123 appointment of a court appointed special advocate, which the circuit court may appoint if a court  
124 appointed special advocate provides services to the circuit court with jurisdiction over the  
125 proceedings instituted pursuant to this section.

**§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 (b) *Temporary care, custody and control at preliminary hearing.* -- Whether or not the court  
31 orders immediate transfer of custody as provided in subsection (a) of this section, if the facts  
32 alleged in the petition demonstrate to the court that there exists imminent danger to the child, the  
33 court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If  
34 the court finds at the preliminary hearing that there are no alternatives less drastic than removal of  
35 the child and that a hearing on the petition cannot be scheduled in the interim period, the court may  
36 order that the child be delivered into the temporary care, custody, and control of the department or

37 a responsible person or agency found by the court to be a fit and proper person for the temporary  
38 care of the child for a period not exceeding sixty days. The court order shall state:

39 (1) That continuation in the home is contrary to the best interests of the child and set forth  
40 the reasons therefor;

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

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

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

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

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

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

63 court determines:

64 (1) The parent has subjected the child, another child of the parent or any other child  
65 residing in the same household or under the temporary or permanent custody of the parent to  
66 aggravated circumstances which include, but are not limited to, abandonment, torture, chronic  
67 abuse and sexual abuse;

68 (2) The parent has:

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

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

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

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

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

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

87 (3) The parental rights of the parent to another child have been terminated involuntarily or  
88 consensually terminated pursuant to § 49-4-607 of this code.

**§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.**

1 (a) *Child and family case plans.* — Following a determination pursuant to §49-4-602 of this  
2 code wherein the court finds a child to be abused or neglected, the department shall file with the  
3 court a copy of the child's case plan, including the permanency plan for the child. The term "case  
4 plan" means a written document that includes, where applicable, the requirements of the family  
5 case plan as provided in §49-4-408 of this code and that also includes, at a minimum, the  
6 following:

7 (1) A description of the type of home or institution in which the child is to be placed,  
8 including a discussion of the appropriateness of the placement and how the agency which is  
9 responsible for the child plans to assure that the child receives proper care and that services are  
10 provided to the parents, child, and foster or kinship parents in order to improve the conditions that  
11 made the child unsafe in the care of his or her parent(s), including any reasonable  
12 accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C.  
13 §12101 *et seq.*, to parents with disabilities in order to allow them meaningful access to  
14 reunification and family preservation services;

15 (2) A plan to facilitate the return of the child to his or her own home or the concurrent  
16 permanent placement of the child; and address the needs of the child while in kinship or foster  
17 care, including a discussion of the appropriateness of the services that have been provided to the  
18 child.

19 The term "permanency plan" refers to that part of the case plan which is designed to  
20 achieve a permanent home for the child in the least restrictive setting available. The plan must  
21 document efforts to ensure that the child is returned home within approximate time lines for  
22 reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal  
23 guardian should be made at the same time, or concurrent with, reasonable efforts to prevent  
24 removal or to make it possible for a child to return to the care of his or her parent(s) safely. If

25 reunification is not the permanency plan for the child, the plan must state why reunification is not  
26 appropriate and detail the alternative, concurrent permanent placement plans for the child to  
27 include approximate time lines for when the placement is expected to become a permanent  
28 placement. This case plan shall serve as the family case plan for parents of abused or neglected  
29 children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian  
30 or custodian or their counsel at least five days prior to the dispositional hearing. The court shall  
31 forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be  
32 heard.

33 (b) Requirements for a Guardian ad litem, other appointed attorneys, and assistant  
34 guardian ad litem. —

35 (1) A guardian ad litem appointed pursuant to §49-4-601(f)(1) of this code, shall, in the  
36 performance of his or her duties, adhere to any specific orders or directives from the court, the  
37 requirements of the Rules of Procedure for Child Abuse and Neglect Proceedings and the Rules of  
38 Professional Conduct and such other rules as the West Virginia Supreme Court of Appeals may  
39 promulgate, and any appendices thereto, and must meet all educational requirements for the  
40 guardian ad litem.

41 (2) A guardian ad litem, assistant guardian ad litem, or any other attorney appointed to  
42 represent a respondent, or intervenor may not be paid for his or her services without a court order  
43 specifying that the attorney, guardian ad litem, or assistant guardian ad litem has fully adhered to  
44 and satisfied the obligations, duties, responsibilities, and requirements of all court orders, and the  
45 Rules of Procedure for Child Abuse and Neglect Proceedings, Rules of Professional Conduct, and  
46 such other rules as the West Virginia Supreme Court of Appeals has promulgated, including any  
47 appendices therein, and has not engaged in any conduct that resulted in an unreasonable delay or  
48 continuance of the proceedings.

49 (3) A guardian ad litem, any other attorney appointed to represent a respondent, or  
50 intervenor, or assistant guardian ad litem may not be paid for his or her services without a court

51 order that specifies that the guardian ad litem, the appointed attorney, or the appointed assistant  
52 guardian ad litem has ~~meeting~~ satisfied the certification and educational requirements of the court.

53 (4) The West Virginia Supreme Court of Appeals is requested to provide guidance to the  
54 judges of the circuit courts regarding supervision of said guardians ad litem. The West Virginia  
55 Supreme Court of Appeals is requested to review the Rules of Procedure for Child Abuse and  
56 Neglect Proceedings and the Rules of Professional Conduct specific to guardians ad litem.

57 (c) *Disposition decisions.* — The court shall give precedence to dispositions in the  
58 following sequence:

59 (1) Dismiss the petition;

60 (2) Refer the child, the abusing parent, the battered parent or other family members to a  
61 community agency for needed assistance and dismiss the petition;

62 (3) Return the child to his or her own home under supervision of the department;

63 (4) Order terms of supervision calculated to assist the child and any abusing parent or  
64 battered parent or parents or custodian which prescribe the manner of supervision and care of the  
65 child and which are within the ability of any parent or parents or custodian to perform;

66 (5) Upon a finding that the abusing parent or battered parent or parents are presently  
67 unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the  
68 care, custody, and control of the department, a licensed private child welfare agency, or a suitable  
69 person who may be appointed guardian by the court. The court order shall state:

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

71 (B) Whether or not the department has made reasonable efforts, with the child's health and  
72 safety being the paramount concern, to preserve the family, or some portion thereof, and to  
73 prevent or eliminate the need for removing the child from the child's home and to make it possible  
74 for the child to safely return home;

75 (C) Whether the department has made reasonable accommodations in accordance with  
76 the Americans with Disabilities Act of 1990, 42 U. S. C. § 12101 *et seq.*, to parents with disabilities

77 in order to allow them meaningful access to reunification and family preservation services;

78 (D) What efforts were made or that the emergency situation made those efforts  
79 unreasonable or impossible; and

80 (E) The specific circumstances of the situation which made those efforts unreasonable if  
81 services were not offered by the department. The court order shall also determine under what  
82 circumstances the child's commitment to the department are to continue. Considerations pertinent  
83 to the determination include whether the child should:

84 (i) Be considered for legal guardianship;

85 (ii) Be considered for permanent placement with a fit and willing relative; or

86 (iii) Be placed in another planned permanent living arrangement, but only in cases where  
87 the child has attained 16 years of age and the department has documented to the circuit court a  
88 compelling reason for determining that it would not be in the best interests of the child to follow one  
89 of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order services  
90 to meet the special needs of the child. Whenever the court transfers custody of a youth to the  
91 department, an appropriate order of financial support by the parents or guardians shall be entered  
92 in accordance with §49-4-801 through §49-4-803 of this code;

93 (6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or  
94 abuse can be substantially corrected in the near future and, when necessary for the welfare of the  
95 child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing  
96 parent and commit the child to the permanent sole custody of the nonabusing parent, if there be  
97 one, or, if not, to either the permanent guardianship of the department or a licensed child welfare  
98 agency. The court may award sole custody of the child to a nonabusing battered parent. If the court  
99 shall so find, then in fixing its dispositional order the court shall consider the following factors:

100 (A) The child's need for continuity of care and caretakers;

101 (B) The amount of time required for the child to be integrated into a stable and permanent  
102 home environment; and

103 (C) Other factors as the court considers necessary and proper. Notwithstanding any other  
104 provision of this article, the court shall give consideration to the wishes of a child 14 years of age or  
105 older or otherwise of an age of discretion as determined by the court regarding the permanent  
106 termination of parental rights. No adoption of a child shall take place until all proceedings for  
107 termination of parental rights under this article and appeals thereof are final. In determining  
108 whether or not parental rights should be terminated, the court shall consider the efforts made by  
109 the department to provide remedial and reunification services to the parent. The court order shall  
110 state:

111 (i) That continuation in the home is not in the best interest of the child and why;

112 (ii) Why reunification is not in the best interests of the child;

113 (iii) Whether or not the department made reasonable efforts, with the child's health and  
114 safety being the paramount concern, to preserve the family, or some portion thereof, and to  
115 prevent the placement or to eliminate the need for removing the child from the child's home and to  
116 make it possible for the child to safely return home, or that the emergency situation made those  
117 efforts unreasonable or impossible; and

118 (iv) Whether or not the department made reasonable efforts to preserve and reunify the  
119 family, or some portion thereof, including a description of what efforts were made or that those  
120 efforts were unreasonable due to specific circumstances.

121 (7) For purposes of the court's consideration of the disposition custody of a child pursuant  
122 to this subsection, the department is not required to make reasonable efforts to preserve the family  
123 if the court determines:

124 (A) The parent has subjected the child, another child of the parent or any other child  
125 residing in the same household or under the temporary or permanent custody of the parent to  
126 aggravated circumstances which include, but are not limited to, abandonment, torture, chronic  
127 abuse, and sexual abuse;

128 (B) The parent has:

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

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

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

137 (iv) Committed a malicious assault that results in serious bodily injury to the child, the  
138 child's other parent, guardian, or custodian, to another child of the parent, or any other child  
139 residing in the same household or under the temporary or permanent custody of the parent;

140 (v) Attempted or conspired to commit malicious assault, as outlined in subparagraph (iv),  
141 or been an accessory before or after the fact to the same;

142 (vi) Committed sexual assault or sexual abuse of the child, the child's other parent,  
143 guardian, or custodian, another child of the parent, or any other child residing in the same  
144 household or under the temporary or permanent custody of the parent; or

145 (vii) Attempted or conspired to commit sexual assault or sexual abuse, as outlined in  
146 subparagraph (vi), or been an accessory before or after the fact to the same.

147 (C) The parental rights of the parent to another child have been terminated involuntarily or  
148 consensually terminated pursuant to § 49-4-607 of this code;

149 (D) A parent has been required by state or federal law to register with a sex offender  
150 registry, and the court has determined in consideration of the nature and circumstances  
151 surrounding the prior charges against that parent, that the child's interests would not be promoted  
152 by a preservation of the family.

153 (d) As used in this section, "No reasonable likelihood that conditions of neglect or abuse  
154 can be substantially corrected" means that, based upon the evidence before the court, the abusing

155 adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or  
156 neglect on their own or with help. Those conditions exist in the following circumstances, which are  
157 not exclusive:

158 (1) The abusing parent or parents have habitually abused or are addicted to alcohol,  
159 controlled substances or drugs, to the extent that proper parenting skills have been seriously  
160 impaired and the person or persons have not responded to or followed through the recommended  
161 and appropriate treatment which could have improved the capacity for adequate parental  
162 functioning;

163 (2) The abusing parent or parents have willfully refused or are presently unwilling to  
164 cooperate in the development of a reasonable family case plan designed to lead to the child's  
165 return to their care, custody and control;

166 (3) The abusing parent or parents have not responded to or followed through with a  
167 reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other  
168 rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as  
169 evidenced by the continuation or insubstantial diminution of conditions which threatened the  
170 health, welfare, or life of the child;

171 (4) The abusing parent or parents have abandoned the child;

172 (5) The abusing parent or parents have repeatedly or seriously injured the child physically  
173 or emotionally, or have sexually abused or sexually exploited the child, and the degree of family  
174 stress and the potential for further abuse and neglect are so great as to preclude the use of  
175 resources to mitigate or resolve family problems, or assist the abusing parent or parents in fulfilling  
176 their responsibilities to the child; and

177 (6) The battered parent's parenting skills have been seriously impaired and the person has  
178 willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable  
179 treatment plan, or has not adequately responded to or followed through with the recommended  
180 and appropriate treatment plan.

181 (e) The court may, as an alternative disposition, allow the parents or custodians an  
 182 improvement period not to exceed six months. During this period the court shall require the parent  
 183 to rectify the conditions upon which the determination was based. The court may order the child to  
 184 be placed with the parents, or any person found to be a fit and proper person, for the temporary  
 185 care of the child during the period. At the end of the period, the court shall hold a hearing to  
 186 determine whether the conditions have been adequately improved and at the conclusion of the  
 187 hearing shall make a further dispositional order in accordance with this section.

188 (f) The court may not terminate the parental rights of a parent on the sole basis that the  
 189 parent is participating in a medication-assisted treatment program, as regulated in §16-5Y-1 *et*  
 190 *seq.*, for substance use disorder, as long as the parent is successfully fulfilling his or her treatment  
 191 obligations in the medication-assisted treatment program.

**§49-4-608. Permanency hearing; frequency; transitional planning; out-of-state placement;**

**findings; notice; permanent placement review.**

1 (a) Permanency hearing when reasonable efforts are not required. — If the court finds  
 2 pursuant to this article that the department is not required to make reasonable efforts to preserve  
 3 the family, then notwithstanding any other provision a permanency hearing must be held within 30  
 4 days following the entry of the court order so finding, and a permanent placement review hearing  
 5 must be conducted at least once every 90 days thereafter until a permanent placement is  
 6 achieved.

7 (b) Permanency hearing every 12 months until permanency is achieved. — If 12 months  
 8 after receipt by the department or its authorized agent of physical care, custody, and control of a  
 9 child either by a court-ordered placement or by a voluntary agreement the department has not  
 10 placed a child in an adoptive home, placed the child with a natural parent, placed the child in legal  
 11 guardianship, or permanently placed the child with a fit and willing relative, the court shall hold a  
 12 permanency hearing. The department shall file a progress report with the court detailing the efforts  
 13 that have been made to place the child in a permanent home and copies of the child's case plan,

14 which shall include the permanency plan as defined in §49-1-201 and §49-4-604 of this code.  
15 Copies of the report shall be sent to the parties and all persons entitled to notice and the right to be  
16 heard. The court shall schedule a hearing giving notice and the right to be present to the child's  
17 attorney; the child; the child's parents; the child's guardians; the child's foster parents; any  
18 preadoptive parent, or any relative providing care for the child; any person entitled to notice and  
19 the right to be heard; and other persons as the court may, in its discretion, direct. The child's  
20 presence may be waived by the child's attorney at the request of the child or if the child is younger  
21 than 12 years-of-age and would suffer emotional harm. The purpose of the hearing is to review the  
22 child's case, to determine whether and under what conditions the child's commitment to the  
23 department shall continue, to determine what efforts are necessary to provide the child with a  
24 permanent home, and to determine if the department has made reasonable efforts to finalize the  
25 permanency plan. The court shall conduct another permanency hearing within 12 months  
26 thereafter for each child who remains in the care, custody, and control of the department until the  
27 child is placed in an adoptive home, returned to his or her parents, placed in legal guardianship, or  
28 permanently placed with a fit and willing relative.

29 (c) Transitional planning for older children. — In the case of a child who has attained 16  
30 years of age, the court shall determine the services needed to assist the child to make the  
31 transition from foster care to independent living. The child's case plan should specify services  
32 aimed at transitioning the child into adulthood. When a child turns 17, or as soon as a child aged 17  
33 comes into a case, the department must immediately provide the child with assistance and support  
34 in developing a transition plan that is personalized at the direction of the child. The plan must  
35 include specific options on housing, health insurance, education, local opportunities for mentors,  
36 continuing support services, work force support, and employment services, and the plan should be  
37 as detailed as the child may elect. In addition to these requirements, when a child with special  
38 needs turns 17, or as soon as a child aged 17 with special needs comes into a case, he or she is  
39 entitled to the appointment of a department adult services worker to the multidisciplinary treatment

40 team, and coordination between the multidisciplinary treatment team and other transition planning  
41 teams, such as special education individualized education planning (IEP) teams.

42 (d) Out-of-state placements. — A court may not order a child to be placed in an out-of-state  
43 facility unless the child is diagnosed with a health issue that no in-state facility or program serves  
44 unless a placement out of state is in closer proximity to the child's family for the necessary care or  
45 the services are able to be provided more timely. If the child is to be placed with a relative or other  
46 responsible person out of state, the court shall use judicial leadership to help expedite the process  
47 under the Interstate Compact for the Placement of Children provided in §49-7-101 and §49-7-  
48 102 of this code and the Uniform Child Custody Jurisdiction and Enforcement Act provided in §48-  
49 20-101 *et seq.* of this code.

50 (e) Findings in order. — At the conclusion of the hearing the court shall, in accordance with  
51 the best interests of the child, enter an order containing all the appropriate findings. The court  
52 order shall state:

53 (1) Whether or not the department made reasonable efforts to preserve the family and to  
54 prevent out-of-home placement or that the specific situation made the effort unreasonable;

55 (2) Whether or not the department made reasonable efforts to finalize the permanency  
56 plan and concurrent plan for the child;

57 (3) The appropriateness of the child's current placement, including its distance from the  
58 child's home and whether or not it is the least restrictive one (or most family-like one) available;

59 (4) The appropriateness of the current educational setting and the proximity to the school  
60 in which the child is enrolled at the time of placement;

61 (5) Services required to meet the child's needs and achieve permanency; and

62 (6) In addition, in the case of any child for whom another planned permanent living  
63 arrangement is the permanency plan the court shall: (A) Inquire of the child about the desired  
64 permanency outcome for the child; (B) make a judicial determination explaining why, as of the date  
65 of the hearing, another planned permanent living arrangement is the best permanency plan for the

66 child; and (C) provide in the court order compelling reasons why it continues to not be in the best  
67 interest of the child to: (i) return home, (ii) be placed for adoption, (iii) be placed with a legal  
68 guardian, or (iv) be placed with a fit and willing relative.

69 (f) The department shall annually report to the court the current status of the placements of  
70 children in the care, custody, and control of the state department who have not been adopted.

71 (g) The department shall file a report with the court in any case where any child in the  
72 custody of the state receives more than three placements in one year no later than 30 days after  
73 the third placement. This report shall be provided to all parties and persons entitled to notice and  
74 the right to be heard. Upon motion by any party, the court shall review these placements and  
75 determine what efforts are necessary to provide the child with a permanent home. No report may  
76 be provided to any parent or parent's attorney whose parental rights have been terminated  
77 pursuant to this article.

78 (h) The department shall give actual notice, in writing, to the court, the child, the child's  
79 attorney, the parents, and the parents' attorney at least 48 hours prior to the move if this is a  
80 planned move, or within 48 hours of the next business day after the move if the child is in imminent  
81 danger in the child's current placement, except where the notification would endanger the child or  
82 the foster family. A multidisciplinary treatment team shall convene as soon as practicable after  
83 notice to explore placement options. This requirement is not waived by placement of the child in a  
84 home or other residence maintained by a private provider. No notice may be provided pursuant to  
85 this provision to any parent or parent's attorney whose parental rights have been terminated  
86 pursuant to this article.

87 (i) Nothing in this article precludes any party from petitioning the court for review of the  
88 child's case at any time. The court shall grant the petition upon a showing that there is a change in  
89 circumstance or needs of the child that warrants court review.

90 (j) Any foster parent, preadoptive parent or relative providing care for the child shall be  
91 given notice of and the right to be heard at the permanency hearing provided in this section.

92 (k) Once an adoption case is assigned to a child placing agency, all related court hearing  
 93 notices shall be sent to the child placing agency as an interested party.

94 (l) Any hearing scheduled pursuant to this section may be continued only for good cause  
 95 upon a written motion properly served on all parties. When a court grants a continuance, the court  
 96 shall enter an order granting the continuance specifying a future date when the hearing will be  
 97 held. Any court order granting a continuance of a hearing scheduled pursuant to this section shall  
 98 specify the specific factual basis for granting the continuance, if the continuance was avoidable,  
 99 and if the continuance was the result of any party, attorney, guardian ad litem, or assistant  
 100 guardian ad litem not satisfying the court's previous orders or requirements. If a court finds that  
 101 the continuance was avoidable but for unreasonable actions of an attorney, guardian ad litem, or  
 102 assistant guardian ad litem the court shall direct that the clerk of the court provide to the West  
 103 Virginia Public Defender Services a properly redacted certified order reflecting the court's findings  
 104 of fact and conclusions of law.

105 (m) At the conclusion of any hearing convened pursuant to this section, the court shall  
 106 make findings of fact and conclusions of law as to whether any attorney guardian ad litem, or  
 107 assistant guardian ad litem has fully adhered to and satisfied the obligations, duties,  
 108 responsibilities, and requirements of all court orders, and the Rules of Procedure for Child Abuse  
 109 and Neglect Proceedings, Rules of Professional Conduct, and such other rules as the West  
 110 Virginia Supreme Court of Appeals has promulgated, including any appendices therein.

**§49-4-610. Improvement periods in cases of child neglect or abuse; findings; orders;  
 extensions; hearings; time limits.**

1 In any proceeding brought pursuant to this article, the court may grant any respondent an  
 2 improvement period in accord with this article. During the period, the court may require temporary  
 3 custody with a responsible person which has been found to be a fit and proper person for the  
 4 temporary custody of the child or children or the state department or other agency during the  
 5 improvement period. An order granting an improvement period shall require the department to

6 prepare and submit to the court a family case plan in accordance with ~~section four hundred eight,~~  
7 ~~of this article §49-4-408 of this code.~~ The types of improvement periods are as follows:

8 (1) *Preadjudicatory improvement period.* -- A court may grant a respondent an  
9 improvement period of a period not to exceed three months prior to making a finding that a child is  
10 abused or neglected pursuant to section six hundred one of this article only when:

11 (A) The respondent files a written motion requesting the improvement period;

12 (B) The respondent demonstrates, by clear and convincing evidence, that the respondent  
13 is likely to fully participate in the improvement period and the court further makes a finding, on the  
14 record, of the terms of the improvement period;

15 (C) In the order granting the improvement period, the court:

16 (i) Orders that a hearing be held to review the matter within sixty days of the granting of the  
17 improvement period; or

18 (ii) Orders that a hearing be held to review the matter within ninety days of the granting of  
19 the improvement period and that the department submit a report as to the respondents progress in  
20 the improvement period within sixty days of the order granting the improvement period; and

21 (D) The order granting the improvement period requires the department to prepare and  
22 submit to the court an individualized family case plan in accordance with ~~section four hundred~~  
23 ~~eight of this article §49-4-408 of this code;~~

24 (E) The order granting a pre-adjudicatory improvement period shall outline the duties,  
25 obligations, and responsibilities of the guardian ad litem and assistant guardian ad litem  
26 throughout the duration of the pre-adjudicatory improvement period, including any case specific  
27 requirements that the court may order.

28 (2) *Post-adjudicatory improvement period.* -- After finding that a child is an abused or  
29 neglected child pursuant to section six hundred one of this article, a court may grant a respondent  
30 an improvement period of a period not to exceed six months when:

31 (A) The respondent files a written motion requesting the improvement period;

32 (B) The respondent demonstrates, by clear and convincing evidence, that the respondent  
33 is likely to fully participate in the improvement period and the court further makes a finding, on the  
34 record, of the terms of the improvement period;

35 (C) In the order granting the improvement period, the court:

36 (i) orders that a hearing be held to review the matter within thirty days of the granting of the  
37 improvement period; or

38 (ii) orders that a hearing be held to review the matter within ninety days of the granting of  
39 the improvement period and that the department submit a report as to the respondent's progress in  
40 the improvement period within sixty days of the order granting the improvement period;

41 (D) Since the initiation of the proceeding, the respondent has not previously been granted  
42 any improvement period or the respondent demonstrates that since the initial improvement period,  
43 the respondent has experienced a substantial change in circumstances. Further, the respondent  
44 shall demonstrate that due to that change in circumstances the respondent is likely to fully  
45 participate in a further improvement period; and

46 (E) The order granting the improvement period requires the department to prepare and  
47 submit to the court an individualized family case plan in accordance with section four hundred  
48 eight of this article.

49 (F) The order granting a post-adjudicatory improvement period shall outline the duties,  
50 obligations, and responsibilities of the guardian ad litem and assistant guardian ad litem  
51 throughout the duration of the post-adjudicatory improvement period, including any case specific  
52 requirements that the court may order.

53 (3) *Post-dispositional improvement period.* – The court may grant an improvement period  
54 not to exceed six months as a disposition pursuant to section six hundred four of this article when:

55 (A) The respondent moves in writing for the improvement period;

56 (B) The respondent demonstrates, by clear and convincing evidence, that the respondent  
57 is likely to fully participate in the improvement period and the court further makes a finding, on the

58 record, of the terms of the improvement period;

59 (C) In the order granting the improvement period, the court:

60 (i) Orders that a hearing be held to review the matter within sixty days of the granting of the  
61 improvement period; or

62 (ii) Orders that a hearing be held to review the matter within ninety days of the granting of  
63 the improvement period and that the department submit a report as to the respondent's progress in  
64 the improvement period within sixty days of the order granting the improvement period;

65 (D) Since the initiation of the proceeding, the respondent has not previously been granted  
66 any improvement period or the respondent demonstrates that since the initial improvement period,  
67 the respondent has experienced a substantial change in circumstances. Further, the respondent  
68 shall demonstrate that due to that change in circumstances, the respondent is likely to fully  
69 participate in the improvement period; and

70 (E) The order granting the improvement period shall require the department to prepare and  
71 submit to the court an individualized family case plan in accordance with section four hundred  
72 eight of this article.

73 (F) The order granting a post-dispositional improvement period shall outline the duties,  
74 obligations, and responsibilities of the guardian ad litem and assistant guardian ad litem  
75 throughout the duration of the post-dispositional improvement period, including any case specific  
76 requirements that the court may order.

77 (4) *Responsibilities of the respondent receiving improvement period. --*

78 (A) When any improvement period is granted to a respondent pursuant to this section, the  
79 respondent shall be responsible for the initiation and completion of all terms of the improvement  
80 period. The court may order the state department to pay expenses associated with the services  
81 provided during the improvement period when the respondent has demonstrated that he or she is  
82 unable to bear the expenses.

83 (B) When any improvement period is granted to a respondent pursuant to this section, the

84 respondent shall execute a release of all medical information regarding that respondent, including,  
85 but not limited to, information provided by mental health and substance abuse professionals and  
86 facilities. The release shall be accepted by a professional or facility regardless of whether the  
87 release conforms to any standard required by that facility.

88 *(5) Responsibilities of the department during improvement period.* -- When any respondent  
89 is granted an improvement period pursuant to this article, the department shall monitor the  
90 progress of the person in the improvement period. This section may not be construed to prohibit a  
91 court from ordering a respondent to participate in services designed to reunify a family or to relieve  
92 the department of any duty to make reasonable efforts to reunify a family required by state or  
93 federal law.

94 *(6) Responsibilities of the guardian ad litem during improvement period.*—When any  
95 respondent is granted an improvement period pursuant to this article, the guardian ad litem shall  
96 maintain regular in-person contact with the minor child, or children, and fully adhere to and satisfy  
97 the obligations, duties, responsibilities, and requirements of all court orders, the Rules of  
98 Procedure for Child Abuse and Neglect Proceedings, the Rules of Professional Conduct, and such  
99 other rules as the West Virginia Supreme Court of Appeals shall promulgate, including any  
100 appendices therein: *Provided*, That the court may consider this requirement satisfied when a duly  
101 appointed assistant guardian ad litem performs any combination of these duties under the  
102 supervision of the appointed guardian ad litem.

103 ~~(6)~~ *(7) Extension of improvement period.* -- A court may extend any improvement period  
104 granted pursuant to subdivision (2) or (3) of this section for a period not to exceed three months  
105 when the court finds that the respondent has substantially complied with the terms of the  
106 improvement period; that the continuation of the improvement period will not substantially impair  
107 the ability of the department to permanently place the child; and that the extension is otherwise  
108 consistent with the best interest of the child.

109 ~~(7)~~ *(8) Termination of improvement period.* -- Upon the motion by any party, the court shall

110 terminate any improvement period granted pursuant to this section when the court finds that  
111 respondent has failed to fully participate in the terms of the improvement period or has satisfied the  
112 terms of the improvement period to correct any behavior alleged in the petition or amended  
113 petition to make his or her child unsafe.

114 ~~(8)~~ (9) Hearings on improvement period. --

115 (A) Any hearing scheduled pursuant to this section may be continued only for good cause  
116 upon a written motion properly served on all parties. When a court grants a continuance, the court  
117 shall enter an order granting the continuance specifying a future date when the hearing will be  
118 held. Any court order granting a continuance of a hearing scheduled pursuant to this section shall  
119 specify the specific factual basis for granting the continuance and if it was the result of any party,  
120 attorney, guardian ad litem, or assistant guardian ad litem not satisfying the court's previous orders  
121 or requirements. If a court finds that the continuance was avoidable but for unreasonable actions  
122 of an attorney, or guardian ad litem, the court shall direct that the clerk of the court provide to the  
123 West Virginia Public Defender Services a properly redacted certified order reflecting the court's  
124 findings of fact and conclusions of law.

125 (B) Any hearing to be held at the end of an improvement period shall be held as nearly as  
126 practicable on successive days and shall be held as close in time as possible after the end of the  
127 improvement period and shall be held no later than thirty days of the termination of the  
128 improvement period.

129 (C) At the conclusion of any hearing convened pursuant to this subdivision, the court shall  
130 make written findings of fact and conclusions of law reflecting the progress made by any party on  
131 an improvement period. The court shall also make findings of fact and conclusions of law as to  
132 whether any attorney, guardian ad litem, or assistant guardian litem as fully adhered to and  
133 satisfied the obligations, duties, responsibilities, and requirements of all court orders, and the  
134 Rules of Procedure for Child Abuse and Neglect Proceedings, Rules of Professional Conduct, and  
135 such other rules as the West Virginia Supreme Court of Appeals has promulgated, including any

136 appendices therein.

137 ~~(9)~~ (10) *Time limit for improvement periods.* -- Notwithstanding any other provision of this  
138 section, no combination of any improvement periods or extensions thereto may cause a child to be  
139 in foster care more than fifteen months of the most recent twenty-two months, unless the court  
140 finds compelling circumstances by clear and convincing evidence that it is in the child's best  
141 interests to extend the time limits contained in this paragraph.

NOTE: The purpose of this bill is to increase compensation of all panel attorneys and guardians ad litem. The bill also creates an assistant guardian ad litem position and specifies required language in certain juvenile abuse and neglect case orders.

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