

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **Senate Bill 795**

By Senator Willis

[Introduced February 6, 2026; referred  
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §49-4-301 of the Code of West Virginia, 1931, as amended, relating  
2 to permitting a parent, guardian, or custodian to pay for an independent medical evaluation  
3 if their child is in temporary protective custody.

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

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

##### **Part III. Emergency Custody of Children Prior To Petition**

###### **§49-4-301. Custody of a neglected child by law enforcement in emergency situations; protective custody; requirements; notices; petition for appointment of special guardian; discharge; immunity.**

1 (a) A child believed to be a neglected child or an abused child may be taken into custody  
2 without the court order otherwise required by ~~section six hundred two of this article~~ §49-4-602 of  
3 this code by a law-enforcement officer if:

4 (1) The child is without supervision or shelter for an unreasonable period of time in light of  
5 the child's age and the ability to care for himself or herself in circumstances presenting an  
6 immediate threat of serious harm to that child; or

7 (2) That officer determines that the child is in a condition requiring emergency medical  
8 treatment by a physician and the child's parents, parent, guardian or custodian refuses to permit  
9 the treatment, or is unavailable for consent. A child who suffers from a condition requiring  
10 emergency medical treatment, whose parents, parent, guardian or custodian refuses to permit the  
11 providing of the emergency medical treatment, may be retained in a hospital by a physician  
12 against the will of the parents, parent, guardian or custodian, as provided in subsection (c) of this  
13 section.

14 (b) A child taken into protective custody pursuant to subsection (a) of this section may be  
15 housed by the department or in any authorized child shelter facility. The authority to hold the child  
16 in protective custody, absent a petition and proper order granting temporary custody pursuant to

17 ~~section six hundred two of this article~~ §49-4-602 of this code, terminates by operation of law upon  
18 the happening of either of the following events, whichever occurs first:

19 (1) The expiration of ninety-six hours from the time the child is initially taken into protective  
20 custody; or

21 (2) The expiration of the circumstances which initially warranted the determination of an  
22 emergency situation.

23 No child may be considered in an emergency situation and custody withheld from the  
24 child's parents, parent, guardian or custodian presenting themselves, himself or herself in a fit and  
25 proper condition and requesting physical custody of the child. No child may be removed from a  
26 place of residence as in an emergency under this section until after:

27 (1) All reasonable efforts to make inquiries and arrangements with neighbors, relatives and  
28 friends have been exhausted; or if no arrangements can be made; and

29 (2) The state department may place in the residence a home services worker with the child  
30 for a period of not less than ~~twelve~~ 12 hours to await the return of the child's parents, parent,  
31 guardian or custodian.

32 Prior to taking a child into protective custody as abandoned at a place at or near the  
33 residence of the child, the law-enforcement officer shall post a typed or legibly handwritten notice  
34 at the place the child is found, informing the parents, parent, guardian or custodian that the child  
35 was taken by a law-enforcement officer, the name, address and office telephone number of the  
36 officer, the place and telephone number where information can continuously be obtained as to the  
37 child's whereabouts, and if known, the worker for the state department having responsibility for the  
38 child.

39 (c) A child taken into protective custody pursuant to this section for emergency medical  
40 treatment may be held in a hospital under the care of a physician against the will of the child's  
41 parents, parent, guardian or custodian for a period not to exceed ~~ninety-six~~ 96 hours. The parents,  
42 parent, guardian or custodian may not be denied the right to see or visit with the child in a hospital

43 and have the right to obtain an independent medical evaluation at the expense of the parent,  
44 guardian, or custodian. The authority to retain a child in protective custody in a hospital as  
45 requiring emergency medical treatment terminates by operation of law upon the happening of  
46 either of the following events, whichever occurs first:

47 (1) When the condition, in the opinion of the physician, no longer required emergency  
48 hospitalization, or;

49 (2) Upon the expiration of ninety-six 96 hours from the initiation of custody, unless within  
50 that time, a petition is presented and a proper order obtained from the circuit court.

51 (d) Prior to assuming custody of a child from a law-enforcement officer, pursuant to this  
52 section, a physician or worker from the department shall require a typed or legibly handwritten  
53 statement from the officer identifying the officer's name, address and office telephone number and  
54 specifying all the facts upon which the decision to take the child into protective custody was based,  
55 and the date, time and place of the taking.

56 (e) Any worker for the department assuming custody of a child pursuant to this section  
57 shall immediately notify the parents, parent, guardian or custodian of the child of the taking of the  
58 custody and the reasons therefor, if the whereabouts of the parents, parent, guardian or custodian  
59 are known or can be discovered with due diligence; and if not, notice and explanation shall be  
60 given to the child's closest relative, if his or her whereabouts are known or can be discovered with  
61 due diligence within a reasonable time. An inquiry shall be made of relatives and neighbors, and if  
62 a relative or appropriate neighbor is willing to assume custody of the child, the child will temporarily  
63 be placed in custody.

64 (f) No child may be taken into custody under circumstances not justified by this section or  
65 pursuant to ~~section six hundred two of this article~~ §49-4-602 of this code without appropriate  
66 process. Any retention of a child or order for retention of a child not complying with the time limits  
67 and other requirements specified in this article shall be void by operation of law.

68 (g) *Petition for appointment of special guardian.* -- Upon the verified petition of any person

69 showing:

70 (1) That any person under the age of eighteen 18 years is threatened with or there is a  
71 substantial possibility that the person will suffer death, serious or permanent physical or emotional  
72 disability, disfigurement or suffering; and

73 (2) That disability, disfigurement or suffering is the result of the failure or refusal of any  
74 parent, guardian or custodian to procure, consent to or authorize necessary medical treatment, the  
75 circuit court of the county in which the person is located may direct the appointment of a special  
76 guardian for the purposes of procuring, consenting to and giving authorization for the  
77 administration of necessary medical treatment. The circuit court may not consider any petition filed  
78 in accordance with this section unless it is accompanied by a supporting affidavit of a licensed  
79 physician.

80 (h) *Notice of petition.* -- So far as practicable, the parents, guardian or custodian of any  
81 person for whose benefit medical treatment is sought shall be given notice of the petition for the  
82 appointment of a special guardian under this section. Notice is not necessary if it would cause a  
83 delay that would result in the death or irreparable harm to the person for whose benefit medical  
84 treatment is sought. Notice may be given in a form and manner as may be necessary under the  
85 circumstances.

86 (i) *Discharge of special guardian.* – Upon the termination of necessary medical treatment  
87 to any person under this section, the circuit court order the discharge of the special guardian from  
88 any further authority, responsibility or duty.

89 (j) *Immunity from civil liability.* -- No person appointed special guardian in accordance with  
90 this article is civilly liable for any act done by virtue of the authority vested in him or her by order of  
91 the circuit court.

NOTE: The purpose of this bill is to permit a parent, guardian, or custodian to pay for an independent medical evaluation of a child in protective custody.

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