

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **House Bill 4603**

By Delegates Burkhammer, Mazzocchi, Chiarelli,

Flanigan, Heckert, Kimble, Miller, and Pinson

[Introduced January 20, 2026; referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §29-21-2, §44-10-3, §44-10-5, and §49-4-601b of the Code of West  
2 Virginia, 1931; and to amend the code by adding a new section §49-4-607a; relating to the  
3 creation of the process of obtaining and adjudicating a pre-adjudicatory alternative  
4 disposition.

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

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

<b>ARTICLE</b>	<b>21.</b>	<b>PUBLIC</b>	<b>DEFENDER</b>	<b>SERVICES.</b>
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### **§29-21-2. Definitions.**

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

2 (1) "Eligible client": Any person who meets the requirements established by this article to  
3 receive publicly funded legal representation in an eligible proceeding as defined herein;

4 (2) "Eligible proceeding": Criminal charges which may result in incarceration; juvenile

5 proceedings; proceedings to revoke parole or probation if the revocation may result in

6 incarceration; contempt of court; child abuse and neglect proceedings which may result in a

7 termination of parental rights; pre-adjudicatory alternative disposition proceedings; appointment of

8 a guardian for a minor in a circuit court pursuant to a pre-adjudicatory alternative disposition;

9 mental hygiene commitment proceedings; extradition proceedings; proceedings which are

10 ancillary to an eligible proceeding, including, but not limited to, proceedings to enhance sentences

11 brought pursuant to ~~sections eighteen and nineteen, article eleven, chapter sixty-one §61-11-18~~

12 ~~and §61-11-19 of this code, forfeiture proceedings brought pursuant to article seven, chapter sixty-~~

13 ~~a of this code §60A-7-701 et seq. of this code, and proceedings brought to obtain extraordinary~~

14 remedies; and appeals from or post-conviction challenges to the final judgment in an eligible

15 proceeding. Legal representation provided pursuant to the provisions of this article is limited to the

16 court system of the State of West Virginia, but does not include representation in municipal courts

17 unless the accused is at risk of incarceration;

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

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

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

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

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

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

## CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

## **ARTICLE 10. GUARDIANS AND WARDS GENERALLY.**

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

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

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

13 (d) Any responsible person with knowledge of the facts regarding the welfare and best  
14 interests of a minor may petition for an appointment of a guardian except a parent or other person  
15 whose rights to the minor have been terminated. No guardianship petition may be considered if the  
16 child who is the subject of the petition is involved in another court proceeding relating to custody or  
17 guardianship or if the petitioner is a parent seeking custodial rights adverse to the other parent.  
18 Provided, That a guardianship petition made pursuant §49-4-607a of this code shall be considered  
19 by the circuit court exercising jurisdiction over the underlying juvenile abuse and neglect  
20 proceeding which gave rise to this action.

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

27 (f) When a petition for the appointment of a guardian is filed pursuant to §49-4-607a of this  
28 code, the petition shall have attached thereto a certified copy of the underlying juvenile abuse and  
29 neglect order authorizing the filing of a petition for the appointment of a guardian. Within two days  
30 of the filing of a petition for the appointment of a guardian, the circuit clerk shall notify the court.

31 Notwithstanding the provisions of subsection (e) of this section, the court shall hold a hearing upon  
32 the petition for the appointment of a guardian within thirty days after the petition is filed.

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

35 (1) The parents consent;  
36 (2) The parents' rights have been previously terminated;  
37 (3) The parents are unwilling or unable to exercise their parental rights;  
38 (4) The parents have abandoned their rights by a material failure to exercise them for a  
39 period of more than six months; or  
40 (5) There are extraordinary circumstances that would, in all reasonable likelihood, result in  
41 serious detriment to the child if the petition is denied.

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

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

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

56 (1) All parents having or asserting parental rights to the minor consent to the appointment

57 of a guardian, or have had their parental rights to the minor previously terminated;

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

59 (3) The guardian ad litem in the underlying juvenile child abuse and neglect proceeding

60 has provided a written report to the court that demonstrates that the appointment of a guardian

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

62 (k) The department, in cases seeking to appoint a guardian pursuant to §49-4-607a of this

63 code, shall file any order entered by a circuit court appointing a guardian pursuant to this article in

64 the underlying juvenile abuse and neglect proceeding.

65 (l) The court, the guardian or the minor may revoke or terminate the guardianship

66 appointment when:

67 (1) The minor reaches the age of eighteen and executes a release stating that the

68 guardian's estate was properly administered and that the minor has received the assets of the

69 estate from the guardian;

70 (2) The guardian or the minor dies;

71 (3) The guardian petitions the court to resign and the court enters an order approving the

72 resignation; or

73 (4) A petition is filed by the guardian, the minor, a parent or an interested person or upon

74 the motion of the court stating that the minor is no longer in need of the assistance or protection of

75 a guardian due to changed circumstances and the termination of the guardianship would be in the

76 minor's best interest.

77 (j) (m) For a petition to revoke or terminate a guardianship filed by a parent, the burden of

78 proof is on the moving party to show by a preponderance of the evidence that there has been a

79 material change of circumstances and that a revocation or termination is in the child's best

80 interest: *Provided*, that a guardianship that was granted in a case filed pursuant to the provisions

81 of §49-4-607a may be revoked, modified, or terminated by a parent pursuant to a filed petition with

82 the circuit court having jurisdiction over the original child abuse and neglect proceeding, the

83 burden of proof is on the moving party to show by clear and convincing evidence that there has  
84 been a material change of circumstances and that a revocation, modification, or termination is in  
85 the child's best interest. All costs and legal fees of a proceeding contemplated in this subsection  
86 shall be borne by the moving party.

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

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

#### **§44-10-5. Bond of guardian.**

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

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

## **CHAPTER 49. CHILD WELFARE.**

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

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

1 (a) Notwithstanding any provision of this code to the contrary, when the department  
2 substantiates an allegation of abuse and/or neglect against a person, but there is no judicial

3 finding of abuse and/or neglect as a result of the allegation, the department shall provide written  
4 notice of the substantiation to the person by certified mail, return receipt requested.

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

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

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

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

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

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

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

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

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

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

37 (1) Where any allegation of abuse and/or neglect is substantiated and a petition for abuse  
38 and/or neglect could be filed and the department does not file a petition, all department records  
39 related to the allegation shall be sealed one year after the substantiation determination, unless  
40 during the one-year period another allegation of child abuse and/or neglect against the person is  
41 substantiated: *Provided*, That the provisions of this subdivision do not apply to a person against  
42 whom an allegation is substantiated but the circumstances do not allow for the filing of a petition  
43 for abuse and/or neglect;

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

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

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

55 rehabilitation and family reunification.

56 (4) (A) Where an allegation of child abuse and/or neglect is substantiated and a petition is  
57 filed with the circuit court which does not end in an adjudication that abuse and/or neglect occurred  
58 due to a pre-adjudicatory alternative disposition, as provided in §49-4-607a of this code, the  
59 allegation shall be considered substantiated and a person may petition the circuit court which  
60 ratified the pre-adjudicatory alternative disposition to have his or her department record sealed  
61 after the minor child subject to the guardianship attains the age of 18, but no petition shall be made  
62 less than five years having elapsed since the order dismissing the underlying abuse and neglect  
63 proceeding is entered: *Provided*, That a petition may not be filed if the person had been the  
64 subject of a substantiated allegation of abuse and/or neglect during the period of time after the  
65 finding and prior to the filing of the petition; and

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

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

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

2023.

#### **§49-4-607a. Pre-Adjudicatory Alternative Disposition.**

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

6 order of guardianship, pursuant to §44-10-1 et seq. of this code, with the relative placement in lieu  
7 of a finding of child abuse and neglect in the underlying case. All adults having or asserting  
8 parental rights to the minor child for which there is a motion for a pre-adjudicatory alternative  
9 disposition must consent to the pre-adjudicatory alternative disposition and the proposed  
10 guardianship.

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

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

23 (d) A court shall enter an order granting the written request for a pre-adjudicatory  
24 alternative disposition and authorizing the filing of a petition for the appointment of a guardian,  
25 pursuant to §44-10-1 et seq. of this code, if the circuit court, after reviewing the parent's motion for  
26 a pre-adjudicatory alternative disposition and the written reports of the guardian ad litem and the  
27 department, determines that all adults having or asserting parental rights to the child consent to a  
28 pre-adjudicatory alternative disposition and the pre-adjudicatory alternative disposition is in the  
29 best interest of the child.

30 (e) When a motion for a pre-adjudicatory alternative disposition has been granted by the  
31 circuit court the legal proceedings in the underlying juvenile abuse and neglect matter shall be

32 stayed until the guardianship has been adjudicated: *Provided*, That that there shall be a review  
33 hearing of the underlying juvenile abuse and neglect matter every 60 days until the circuit court  
34 receives an order that the guardianship has been adjudicated.

35 (f) All parties to the underlying child abuse and neglect proceeding shall be afforded the  
36 right to legal counsel. The court shall appoint the same legal counsel to represent the parties in the  
37 legal proceedings appointing a guardian.

38 (g) The circuit court shall dismiss the underlying child abuse and neglect case once the  
39 order appointing a guardian has been entered and provided to the circuit court having jurisdiction  
40 over the underlying juvenile child abuse and neglect proceeding, demonstrating that permanency  
41 has been established.

42 (g) A pre-adjudicatory alternative disposition is not available to parents if a court  
43 determines:

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

48 (2) The parent has:

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

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

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

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

60        or

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

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

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

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