

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

### **Introduced**

## **House Bill 4621**

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

[Introduced January 20, 2026; referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-601, §49-4-602, §49-4-604, §49-4-608, and §49-4-610 of the  
2 Code of West Virginia, 1931, as amended, relating to requiring the circuit court to make  
3 certain designated findings of fact and conclusions of law in its juvenile child abuse and  
4 neglect orders.

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

Part VI. Procedures in Cases of Child Neglect or Abuse

**ARTICLE 4. COURT ACTIONS.**

**§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 person  
8 having knowledge of the facts. The petition shall allege specific conduct including time and place,  
9 how the conduct comes within the statutory definition of neglect or abuse with references thereto,  
10 any supportive services provided by the department to remedy the alleged circumstances and the  
11 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 10  
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.

17 (d) *Department action upon filing of the petition.* -- At the time of the institution of any  
18 proceeding under this article, the department shall provide supportive services in an effort to  
19 remedy circumstances detrimental to a child.

20 (e) *Notice of hearing.* --

21 (1) The petition and notice of the hearing shall be served upon both parents and any other  
22 custodian, giving to the parents or custodian at least five days' actual notice of a preliminary  
23 hearing and at least 10 days' notice of any other hearing.

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

26 (3) In cases where personal service within West Virginia cannot be obtained after due  
27 diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall  
28 be mailed to the person by certified mail, addressee only, return receipt requested, to the last  
29 known address of the person. If the person signs the certificate, service shall be complete and the  
30 certificate shall be filed as proof of the service with the clerk of the circuit court.

31 (4) If service cannot be obtained by personal service or by certified mail, notice shall be by  
32 publication as a Class II legal advertisement in compliance with §59-3-1 et seq. of this code.

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

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

37 (f) *Right to counsel.* --

38 (1) In any proceeding under this article, ~~the a child, his or her parents and his or her legally~~  
39 ~~established custodian or other persons standing in loco parentis to him or her~~ has the right to be  
40 represented by a guardian ad litem, legal counsel, or both at every stage of the proceedings and a  
41 guardian ad litem, legal counsel, or both will be appointed. In this initial order of appointment, the  
42 court shall certify that the all appointed counsel have met all educational requirements to serve as

43 a guardian ad litem, shall outline the duties, obligations, and responsibilities of the guardian ad  
44 litem including requiring regular in-person contact with the minor child, or children, and shall  
45 require that the guardian ad litem, adhere to the requirements of the Rules of Procedure for Child  
46 Abuse and Neglect Proceedings, the Rules of Professional Conduct, and such other rules as the  
47 West Virginia Supreme Court of Appeals may promulgate, including any appendices thereto.

48 (2) In any proceeding under this article, a child's ~~his or her~~ 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

allow to each attorney so appointed a fee in the same amount which appointed counsel can receive in felony cases.

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

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

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

(j) *Priority of proceedings.* -- Any petition filed and any proceeding held under this article shall, to the extent practicable, be given priority over any other civil action before the court, except

proceedings under §48-27-309 of this code and actions in which trial is in progress. Any petition filed under this article shall be docketed immediately upon filing. Any hearing to be held at the end of an improvement period and any other hearing to be held during any proceedings under this article shall be held as nearly as practicable on successive days and, with respect to the hearing to be held at the end of an improvement period, shall be held as close in time as possible after the end of the improvement period and shall be held within 30 days of the termination of the improvement period.

(k) *Procedural safeguards.* -- The petition may not be taken as confessed. A transcript or recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules of evidence shall apply. Following the court's determination, it shall be inquired of the parents or custodians whether or not appeal is desired and the response transcribed. A negative response may not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the same is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating that he or she cannot pay therefor

(l) CASA. — The department, guardian ad litem, or any parent as defined in §49-1-204 of this code who is a party to a proceeding instituted pursuant to the provisions of this section, may, in accordance with the Rules of Procedure for Child Abuse and Neglect Proceedings, request the appointment of a court appointed special advocate, which the circuit court may appoint if a court appointed special advocate provides services to the circuit court with jurisdiction over the 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 10 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~~ may not allow placement pursuant to this section of the child or children in the home unless  
11 the alleged abusing person is or has been precluded from visiting or residing in the home by  
12 judicial 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

prevent the placement or that the emergency situation made those efforts unreasonable or impossible. The order may also direct any party or the department to initiate or become involved in services to facilitate reunification of the family.

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

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

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

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

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

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

(c) *Emergency removal by department during pendency of case.* -- Regardless of whether



the court has previously granted the department care and custody of a child, if the department takes physical custody of a child during the pendency of a child abuse and neglect case (also known as removing the child) due to a change in circumstances and without a court order issued at the time of the removal, the department must immediately notify the court and a hearing shall take place within 10 days to determine if there is imminent danger to the physical well-being of the child, and there is no reasonably available alternative to removal of the child. The court findings and order shall be consistent with subsections (a) and (b) of this section.

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

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

(2) The parent has:

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

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

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

(D) Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent or any other

child residing in the same household or under the temporary or permanent custody of the parent;

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

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

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

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

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

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

The term "permanency plan" refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian should be made at the same time, or concurrent with, reasonable efforts to prevent removal or to make it possible for a child to return to the care of his or her parent(s) safely. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative, concurrent permanent placement plans for the child to include approximate time lines for when the placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard.

*(b) Requirements for a Guardian ad litem and other appointed attorneys. —*

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

(2) A guardian ad litem, or any other attorney appointed to represent a respondent, or

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

47 (3) A guardian ad litem or attorney appointed to represent a respondent or intervenor may  
48 not be paid for his or her services without a court order that specifies that the guardian ad litem or  
49 the appointed attorney has meeting satisfied the certification and educational requirements of the  
50 court.

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

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

57 (1) Dismiss the petition;

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

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

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

64 (5) Upon a finding that the abusing parent or battered parent or parents are presently  
65 unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the  
66 care, custody, and control of the department, a licensed private child welfare agency, or a suitable

67 person who may be appointed guardian by the court. The court order shall state:

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

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

73 (C) Whether the department has made reasonable accommodations in accordance with  
74 the Americans with Disabilities Act of 1990, 42 U. S. C. § 12101 *et seq.*, to parents with disabilities  
75 in order to allow them meaningful access to reunification and family preservation services;

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

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

82 (i) Be considered for legal guardianship;

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

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

91 (6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or  
92 abuse can be substantially corrected in the near future and, when necessary for the welfare of the

child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. The court may award sole custody of the child to a nonabusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors:

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

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

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

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

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

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

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

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

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

(B) The parent has:

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

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

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

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

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

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

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

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

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

(d) As used in this section, "No reasonable likelihood that conditions of neglect or abuse can be substantially corrected" means that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Those conditions exist in the following circumstances, which are not exclusive:

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

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

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

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

(5) The abusing parent or parents have repeatedly or seriously injured the child physically



or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems, or assist the abusing parent or parents in fulfilling their responsibilities to the child; and

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

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

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

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

(a) Permanency hearing when reasonable efforts are not required. — If the court finds pursuant to this article that the department is not required to make reasonable efforts to preserve the family, then notwithstanding any other provision a permanency hearing must be held within 30 days following the entry of the court order so finding, and a permanent placement review hearing 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

aimed at transitioning the child into adulthood. When a child turns 17, or as soon as a child aged 17 comes into a case, the department must immediately provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child. The plan must include specific options on housing, health insurance, education, local opportunities for mentors, continuing support services, work force support, and employment services, and the plan should be as detailed as the child may elect. In addition to these requirements, when a child with special needs turns 17, or as soon as a child aged 17 with special needs comes into a case, he or she is entitled to the appointment of a department adult services worker to the multidisciplinary treatment team, and coordination between the multidisciplinary treatment team and other transition planning teams, such as special education individualized education planning (IEP) teams.

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

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

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

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

(3) The appropriateness of the child's current placement, including its distance from the

child's home and whether or not it is the least restrictive one (or most family-like one) available;

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

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

(6) In addition, in the case of any child for whom another planned permanent living arrangement is the permanency plan the court shall: (A) Inquire of the child about the desired permanency outcome for the child; (B) make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child; and (C) provide in the court order compelling reasons why it continues to not be in the best interest of the child to: (i) return home, (ii) be placed for adoption, (iii) be placed with a legal guardian, or (iv) be placed with a fit and willing relative.

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

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

(h) The department shall give actual notice, in writing, to the court, the child, the child's attorney, the parents, and the parents' attorney at least 48 hours prior to the move if this is a planned move, or within 48 hours of the next business day after the move if the child is in imminent danger in the child's current placement, except where the notification would endanger the child or the foster family. A multidisciplinary treatment team shall convene as soon as practicable after 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, or guardian ad litem not satisfying the  
100 court's previous orders or requirements. If a court finds that the continuance was avoidable but for  
101 unreasonable actions of an attorney or guardian ad litem the court shall direct that the clerk of the  
102 court provide to the West Virginia Public Defender Services a properly redacted certified order  
103 reflecting the court's findings of fact and conclusions of law.

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

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

In any proceeding brought pursuant to this article, the court may grant any respondent an improvement period in accord with this article. During the period, the court may require temporary custody with a responsible person which has been found to be a fit and proper person for the temporary custody of the child or children or the state department or other agency during the improvement period. An order granting an improvement period shall require the department to prepare and submit to the court a family case plan in accordance with §49-4-408 of this code. The types of improvement periods are as follows:

(1) *Pre-adjudicatory improvement period.* -- A court may grant a respondent an improvement period of a period not to exceed three months prior to making a finding that a child is abused or neglected pursuant to §49-4-601 of this code only when:

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

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

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

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

(ii) Orders that a hearing be held to review the matter within 90 days of the granting of the improvement period and that the department submit a report as to the respondents progress in the improvement period within 60 days of the order granting the improvement period; and

(D) The order granting the improvement period requires the department to prepare and submit to the court an individualized family case plan in accordance with §49-4-408 of this code;

(E) The order granting a pre-adjudicatory improvement period shall outline the duties, obligations, and responsibilities of the guardian ad litem throughout the duration of the pre-

25 adjudicatory improvement period, including any case specific requirements that the court may  
26 order.

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

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

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

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

35 (i) orders that a hearing be held to review the matter within 30 days of the granting of the  
36 improvement period; or

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

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

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

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

51 order.

52 (3) *Post-dispositional improvement period.* – The court may grant an improvement period  
53 not to exceed six months as a disposition pursuant to §49-4-604 of this code when:

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

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

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

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

61 (ii) Orders that a hearing be held to review the matter within 90 days of the granting of the  
62 improvement period and that the department submit a report as to the respondent's progress in the  
63 improvement period within sixty days of the order granting the improvement period;

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

69 (E) The order granting the improvement period shall require the department to prepare and  
70 submit to the court an individualized family case plan in accordance with §49-4-408 of this code.

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

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

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



respondent shall be responsible for the initiation and completion of all terms of the improvement period. The court may order the state department to pay expenses associated with the services provided during the improvement period when the respondent has demonstrated that he or she is unable to bear the expenses.

(B) When any improvement period is granted to a respondent pursuant to this section, the respondent shall execute a release of all medical information regarding that respondent, including, but not limited to, information provided by mental health and substance abuse professionals and facilities. The release shall be accepted by a professional or facility regardless of whether the release conforms to any standard required by that facility.

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

*(6) Responsibilities of the guardian ad litem during improvement period.*—When any respondent is granted an improvement period pursuant to this article, the guardian ad litem shall maintain regular in-person contact with the minor child, or children, and fully adhere to and satisfy the obligations, duties, responsibilities, and requirements of all court orders, the Rules of Procedure for Child Abuse and Neglect Proceedings, the Rules of Professional Conduct, and such other rules as the West Virginia Supreme Court of Appeals shall promulgate, including any appendices therein.

~~(6)~~ *(7) Extension of improvement period.* -- A court may extend any improvement period granted pursuant to subdivision (2) or (3) of this section for a period not to exceed three months when the court finds that the respondent has substantially complied with the terms of the improvement period; that the continuation of the improvement period will not substantially impair

the ability of the department to permanently place the child; and that the extension is otherwise consistent with the best interest of the child.

~~(7)~~ (8) *Termination of improvement period.* -- Upon the motion by any party, the court shall terminate any improvement period granted pursuant to this section when the court finds that respondent has failed to fully participate in the terms of the improvement period or has satisfied the terms of the improvement period to correct any behavior alleged in the petition or amended petition to make his or her child unsafe.

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

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

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

(C) At the conclusion of any hearing convened pursuant to this subdivision, the court shall make written findings of fact and conclusions of law reflecting the progress made by any party on an improvement period. The court shall also make findings of fact and conclusions of law as to whether any attorney or guardian ad litem has fully adhered to and satisfied the obligations, duties,

129 responsibilities, and requirements of all court orders, and the Rules of Procedure for Child Abuse  
130 and Neglect Proceedings, Rules of Professional Conduct, and such other rules as the West  
131 Virginia Supreme Court of Appeals has promulgated, including any appendices therein.

132 ~~(9)~~ (10) *Time limit for improvement periods.* -- Notwithstanding any other provision of this  
133 section, no combination of any improvement periods or extensions thereto may cause a child to be  
134 in foster care more than fifteen months of the most recent 22 months, unless the court finds  
135 compelling circumstances by clear and convincing evidence that it is in the child's best interests to  
136 extend the time limits contained in this paragraph.

NOTE: The purpose of this bill is to amend the West Virginia Code in relation to juvenile abuse and neglect proceedings to require that circuit courts make certain findings of fact and conclusions of law as it relates to the court's orders.

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.