

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 item 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

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

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

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

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

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

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

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

111 (l) CASA. — The department, guardian ad litem, or any parent as defined in §49-1-204 of
112 this code who is a party to a proceeding instituted pursuant to the provisions of this section, may, in
113 accordance with the Rules of Procedure for Child Abuse and Neglect Proceedings, request the
114 appointment of a court appointed special advocate, which the circuit court may appoint if a court
115 appointed special advocate provides services to the circuit court with jurisdiction over the
116 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.**

(a)(1) *Temporary care, custody, and control upon filing of the petition.* -- Upon the filing of a petition, the court may order that the child alleged to be an abused or neglected child be delivered not more than 10 days into the care, custody, and control of the department or a responsible person who is not the custodial parent or guardian of the child, if it finds that:

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

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

(2) Where the alleged abusing person, if known, is a member of a household, the court

shall may not allow placement pursuant to this section of the child or children in the home unless the alleged abusing person is or has been precluded from visiting or residing in the home by judicial order.

(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:

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

(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 10 days to determine if there is imminent danger to the physical well-being of the child,
58 and there is no reasonably available alternative to removal of the child. The court findings and
59 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, 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

83 (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

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* and other appointed attorneys. —

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

40 (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

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

98 (A) The child's need for continuity of care and caretakers;
99 (B) The amount of time required for the child to be integrated into a stable and permanent
100 home environment; and

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

109 (i) That continuation in the home is not in the best interest of the child and why;
110 (ii) Why reunification is not in the best interests of the child;
111 (iii) Whether or not the department made reasonable efforts, with the child's health and
112 safety being the paramount concern, to preserve the family, or some portion thereof, and to
113 prevent the placement or to eliminate the need for removing the child from the child's home and to
114 make it possible for the child to safely return home, or that the emergency situation made those
115 efforts unreasonable or impossible; and

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

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

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

126 (B) The parent has:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

186 (f) The court may not terminate the parental rights of a parent on the sole basis that the
187 parent is participating in a medication-assisted treatment program, as regulated in §16-5Y-1 et
188 seq., for substance use disorder, as long as the parent is successfully fulfilling his or her treatment
189 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, 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.
1				
2	In any proceeding brought pursuant to this article, the court may grant any respondent an			
3	improvement period in accord with this article. During the period, the court may require temporary			
4	custody with a responsible person which has been found to be a fit and proper person for the			
5	temporary custody of the child or children or the state department or other agency during the			
6	improvement period. An order granting an improvement period shall require the department to			
7	prepare and submit to the court a family case plan in accordance with §49-4-408 of this code. The			
8	types of improvement periods are as follows:			
9				
10	(1) <i>Pre-adjudicatory improvement period.</i> -- A court may grant a respondent an			
11	improvement period of a period not to exceed three months prior to making a finding that a child is			
12	abused or neglected pursuant to §49-4-601 of this code only when:			
13				
14	(A) The respondent files a written motion requesting the improvement period;			
15				
16	(B) The respondent demonstrates, by clear and convincing evidence, that the respondent			
17	is likely to fully participate in the improvement period and the court further makes a finding, on the			
18	record, of the terms of the improvement period;			
19				
20	(C) In the order granting the improvement period, the court:			
21				
22	(i) Orders that a hearing be held to review the matter within 60 days of the granting of the			
23	improvement period; or			
24				
25	(ii) Orders that a hearing be held to review the matter within 90 days of the granting of the			
26	improvement period and that the department submit a report as to the respondents progress in the			
27	improvement period within 60 days of the order granting the improvement period; and			
28				
29	(D) The order granting the improvement period requires the department to prepare and			
30	submit to the court an individualized family case plan in accordance with §49-4-408 of this code;			
31				
32	<u>(E) The order granting a pre-adjudicatory improvement period shall outline the duties,</u>			
33	<u>obligations, and responsibilities of the guardian ad litem throughout the duration of the pre-</u>			

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

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

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

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

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

99 (6) (7) *Extension of improvement period.* -- A court may extend any improvement period
100 granted pursuant to subdivision (2) or (3) of this section for a period not to exceed three months
101 when the court finds that the respondent has substantially complied with the terms of the
102 improvement period; that the continuation of the improvement period will not substantially impair

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

105 (7) (8) Termination of improvement period. -- Upon the motion by any party, the court shall
106 terminate any improvement period granted pursuant to this section when the court finds that
107 respondent has failed to fully participate in the terms of the improvement period or has satisfied the
108 terms of the improvement period to correct any behavior alleged in the petition or amended
109 petition to make his or her child unsafe.

110 (8) (9) Hearings on improvement period. --

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

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

125 (C) At the conclusion of any hearing convened pursuant to this subdivision, the court shall
126 make written findings of fact and conclusions of law reflecting the progress made by any party on
127 an improvement period. The court shall also make findings of fact and conclusions of law as to
128 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.