

WEST VIRGINIA CODE: §49-4-302

§49-4-302. Authorizing a family court judge to order custody of a child in emergency situations; requirements; orders; investigative reports; notification required.

(a) Notwithstanding the jurisdictional limitations contained in section two, article two-a, chapter fifty-one of this code, family court judges are authorized to order the department to take emergency custody of a child who is in the physical custody of a party to an action or proceeding before the family court, if the family court judge finds that there is clear and convincing evidence that:

(1) There exists an imminent danger to the physical well-being of the child as defined in section two hundred one, article one of this chapter;

(2) The child is not the subject of a pending action before the circuit court alleging abuse and neglect of the child; and

(3) There are no reasonable available alternatives to the emergency custody order.

(b) An order entered pursuant to subsection (a) of this section must include specific written findings.

(c) A copy of the order issued pursuant to subsection (a) of this section shall be transmitted forthwith to the department, the circuit court and the prosecuting attorney.

(d) Upon receipt of an order issued pursuant to subsection (a) of this section, the department shall immediately respond and assist the family court judge in emergency placement of the child.

(e)(1) Upon receipt of an order issued pursuant to subsection (a) of this section, the circuit court shall cause to be entered and served, an administrative order in the name of and regarding the affected child, directing the department to submit, within ninety-six hours from the time the child was taken into custody, an investigative report to both the circuit and family court.

(2) The investigative report shall include a statement of whether the department intends to file a petition pursuant to section six hundred two of this article.

(f)(1) An order issued pursuant to subsection (a) of this section terminates by operation of law upon expiration of ninety-six hours from the time the child is initially taken into protective custody unless a petition is filed with the circuit court under section six hundred two of this article within ninety-six hours from the time the child is initially taken into protective custody.

(2) The filing of a petition within ninety-six hours from the time the child is initially taken into protective custody extends the emergency custody order issued pursuant to subsection (a) of this section until a preliminary hearing is held before the circuit court, unless the circuit court orders otherwise.

(g)(1) Any worker for the department assuming custody of a child pursuant to this section shall immediately notify the parents, parent, grandparents, grandparent, guardian or custodian of the child of the taking of the custody and the reasons therefor if the whereabouts of the parents, parent, grandparents, grandparent, guardian or custodian are known or can be discovered with due diligence and, if not, a notice and explanation shall be given to the child's closest relative if his or her whereabouts are known or can be discovered with due diligence within a reasonable time. An inquiry shall be made of relatives and neighbors and, if an appropriate relative or neighbor is willing to assume custody of the child, the child will temporarily be placed in that person's custody.

(2) In the event no other reasonable alternative is available for temporary placement of a child pursuant to subdivision (1) of this subsection, the child may be housed by the department in an authorized child shelter facility.