WEST VIRGINIA CODE CHAPTER 49 ARTICLE 8

WV Legislature

§49-8-1. Legislative findings; statement of legislative purpose.

(a) In certain circumstances where a parent, or legal custodian of a child is temporarily unable to care for the child due to a crisis or other circumstances, a less intrusive the Legislature finds that alternative to guardianship or the Department of Human Services taking custody of the child should be available. In such circumstances, a parent, or legal custodian may benefit from the assistance of charitable organizations in their community that assist families by providing safe, temporary care for children and support for families during difficult times.

(b) Accordingly, the Legislature finds that a parent, or legal guardian shall have the right to provide for the temporary care of their child with the assistance of qualified charitable organizations as outlined in this code.

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§49-8-2. Definitions.

For purposes of this article:

(1) “Child” means an individual under eighteen years of age;

(2) “Qualified nonprofit organization” means a charitable or religious institution that is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, which assists the parent or legal guardian of a child with the process of providing for the temporary care of a child through the execution of a power of attorney as described in this section.

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§49-8-2a. Execution of additional article.

The Governor is further authorized and directed to execute, with any other state or states legally joining in the same, an additional article to said compact in the form substantially as follows:

That this article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

For the purposes of this article, "child," as used herein, means any minor within the jurisdictional age limits of any court in the home state.

When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child's return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that such child is in fact a resident of said state and subject to the jurisdiction of the court thereof, shall within five days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid from such funds as such home state may procure, designate, or provide, prompt action being of the essence.

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§49-8-2b. Execution of amendment.

The Governor is further authorized and directed to execute, with any other state or states legally joining in the same, an amendment to said compact in the form substantially as follows:

(a) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

(b) All provisions and procedures of articles V and VI of the interstate compact on juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

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§49-8-3. Delegation of care and custody of a child

(a) The following shall apply only to situations where a parent, guardian or legal custodian of a child provides for the temporary care and custody of a child with the assistance of a qualified nonprofit organization. Nothing in this section shall be interpreted to restrict the rights of parents, guardians or legal custodians providing for the care of children by power of attorney in other contexts.

(b) A parent, guardian or legal custodian of a child may, by a properly executed power of attorney, delegate to a person, for a period not to exceed one year, the care and custody of the child.

(c) A parent, guardian or legal custodian may not delegate:

(1) The power to consent to marriage or adoption of the child;

(2) The performance or inducement of an abortion on or for the child; or

(3) The termination of parental rights to the child.

(d) A delegation of care and custody of a child, under this article, does not change or modify any parental or legal rights, obligations, or authority established by an existing court order, or deprive the parent, guardian or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child.

(e) The parent, guardian or legal custodian of the child may revoke or withdraw this power of attorney at any time. Upon the termination, expiration, or revocation of the power of attorney the child shall be returned to the custody of the parent, guardian or legal custodian within forty-eight hours.

(f) Unless the authority is revoked or withdrawn by the parent, guardian or legal custodian, the designee shall exercise parental or legal authority on a continuous basis without compensation for the duration of the power of attorney.

(g) The care and custody of a child may only be delegated to the extent, and so long as, the parent, guardian or legal custodian retains care and custody. If the rights of the parent, guardian or custodian of the child are terminated, the power of attorney shall be deemed to be revoked. A court that revokes the care and custody rights of a parent, guardian or legal custodian shall notify the person to whom those parental rights has been delegated, and the child may remain with that person until the court shall finalize the subsequent placement of the child: *Provided*, That no period of placement with a person pursuant to the provisions of this article shall be considered as a factor in a custody hearing in which a family member seeks to be awarded custody of the child.

(h) The execution of a power of attorney by a parent, guardian or legal custodian does not, without other evidence, constitute abandonment, abuse or neglect unless the parent,

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guardian or legal custodian fails to either take custody of the child or execute a new power of attorney after the one year time limit has elapsed: Provided, That nothing in this article may be interpreted to prevent the West Virginia Bureau for Children and Families or law enforcement from investigating allegations of abuse, abandonment, neglect or other mistreatment of a child.

(i) If a parent, guardian or legal custodian of a child wishes to utilize the power of attorney authorized by this section to delegate any powers regarding the care and custody of the child to another person, the qualified nonprofit organization shall conduct a criminal history and federal and state background check on the person to whom powers are delegated prior to the execution of the power of attorney. The criminal history and federal and state background check shall be paid for by the qualified nonprofit organization, the parent, guardian or legal custodian, or the parent's designee. Additionally, the qualified nonprofit organization shall train the designee in the rights, duties, and limitations associated with providing care for a child under this section, including the prevention and reporting of suspected child abuse or neglect.

(j) The designee may not move from the address listed on the parental rights form without written approval of the parent, guardian or legal custodian.

(k) Any person who accepts care and custody of a child pursuant to the provisions of this article shall be deemed a person mandated to report suspected abuse and neglect pursuant to the provisions of section eight hundred three, article two, chapter forty-nine of this code.

(l) If a parent, guardian or legal custodian dies or becomes incapacitated, then the provisions of article ten, chapter forty-four of this code shall apply.

(m) Nothing in this section is intended, nor shall anything herein be interpreted, to otherwise restrict the rights of custodial parents or non-custodial parents to temporarily delegate or provide for the care and custody of a child, or to assert their right to request custody, in accordance with other provisions of West Virginia law.

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§49-8-4. Delegation of parental rights form.

(a) The following statutory form of power of attorney to delegate parental or legal custody may be used:

STATE OF WEST VIRGINIA

STATUTORY FORM FOR POWER OF ATTORNEY TO DELEGATE PARENTAL OR LEGAL CUSTODIAN POWERS

(1) "I, _____, certify that I am the parent or legal custodian of:

_____ _____

(Full name of minor child) (Date of birth)

_____ _____

(Full name of minor child) (Date of birth)

_____ _____

(Full name of minor child) (Date of birth)

who is/are minor children."

(2) "I designate _____ (Full name of designee),

_____

(Street address, city, state and zip code of designee)

_____

(Home phone of designee) (Work phone of designee) as the designee of each minor child named above."

(3) "I delegate to the designee all of my power and authority regarding the care, custody and property of each minor child named above, including but not limited to the right to enroll the child in school, inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function or treatment that may concern the child. This delegation does not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child."

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Or

(4) “I delegate to the designee the following specific powers and responsibilities

(write in):_____

(In the event paragraph four is completed paragraph three does not apply).

This delegation does not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.”

(5) “This power of attorney is effective for a period not to exceed one year, beginning,

_____, ___, and ending _____, ____. I reserve the right to revoke this authority at any time."

By: _____ (Parent/Legal Custodian signature)

(6) “I hereby accept my designation as designee for the minor child/children specified in this power of attorney.

By: _____ (Designee signature)

State of _____

County of _____

ACKNOWLEDGMENT

Before me, the undersigned, a Notary Public, in and for said County and State on this ____day of _____, ____, personally appeared _____(Name of Parent/Legal Custodian) and _____(Name of designee), to me known to be the identical persons who executed this instrument and acknowledged to me that each executed the same as his or her free and voluntary act and deed for the uses and purposes set forth in the instrument.

Witness my hand and official seal the day and year above written.

_____ (Signature of notarial officer)

_____ (Title and Rank)

My commission expires: _____”

(b) A power of attorney is legally sufficient under this article if the wording of the form substantially complies with this section, the form is properly completed, and the signatures

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of the parties are acknowledged.

(c) A copy of each power of attorney executed pursuant to this article shall be retained by the qualified nonprofit organization for a period of three years following the conclusion of the power of attorney. The qualified nonprofit organization shall, upon request, make these records available to the Department of Health and Human Resources.

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§49-8-5. Mandatory disclosures by child investigative personnel.

During a child protective investigation that does not result in an out-of-home placement, a child protective investigator shall provide information to the parent, guardian or legal custodian about community service programs that provide respite care, voluntary guardianship or other support services for families in crisis.

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§49-8-6. Applicability of licensing and other requirements of childcare facilities.

(a) A delegation under this article by a parent, guardian or legal custodian is not subject to the requirements of the child care facility licensing statutes or foster care licensing statutes, and does not constitute an out of home child placement under this code.

(b) A qualified nonprofit organization as defined herein shall not be considered a child care center, child placing agency, or child welfare agency as defined in section two hundred six of article one, chapter forty-nine of this Code, unless such organization also pursues these activities in addition to providing services outlined under this section.

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§49-8-7. Additional procedures not precluded.

In addition to any procedure provided in articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

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