

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-26-80

Time 2:35 p.m.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980

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ENROLLED

Committee Substitute for
HOUSE BILL No. 1410

(By Mr. Schifano)

— ● —

Passed March 8, 1980

In Effect Ninety Days From Passage



No. 1410

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1410

(By MR. SCHIFANO)

[Passed March 8, 1980; in effect ninety days from passage.]

AN ACT to amend and reenact section seventeen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article six, chapter forty-nine of said code; to further amend article six of said chapter by adding thereto a new section, designated section nine; and to amend article one-c, chapter sixty-two of said code by adding thereto a new section, designated section seventeen-a, all relating to child welfare generally; authorizing and empowering the state department of welfare to provide care, support, protective services and custody for certain children; deleting requirements that the findings of the court must be based partially upon conditions existing at time of hearing; establishing emergency procedures for the taking into custody, without court action, by a law-enforcement officer of any neglected or abused child who is abandoned or who needs emergency medical treatment; specifying certain conditions and time and other limitations in connection with such emergency procedures; requiring certain inquiries, notices and statements; relating to other restrictions and limitations on the taking and retention of custody of children; defining terms; and relating to conditions of bail in criminal offenses against a child.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article six of chapter forty-nine be amended and reenacted; that article six of said chapter be further amended by adding thereto a new section, designated section nine, and that article one-c, chapter sixty-two of said code be amended by adding thereto a new section, designated section seventeen-a, all to read as follows:

CHAPTER 49. CHILD WELFARE.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-16. State responsibility for child care.

1 The state department is hereby authorized and empowered
2 to provide care, support and protective services for children
3 who are handicapped by dependency, neglect, illegitimate
4 birth, mental or physical disability, or who for other reasons
5 are in need of public service. Such department is also hereby
6 authorized and empowered in its discretion to accept children
7 for care from their parent or parents, guardian, custodian or
8 relatives and to accept the custody of children committed to
9 its care by courts exercising juvenile jurisdiction. The state
10 department of welfare or any county office of such department
11 is also hereby authorized and empowered in its discretion to
12 accept temporary custody of children for care from any
13 law-enforcement officer in an emergency situation.

14 The state department of welfare shall provide care in special
15 boarding homes for children needing detention pending dis-
16 position by a court having juvenile jurisdiction or temporary
17 care following such court action.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-2. Petition to court when child believed neglected or abused; notice—Right to counsel; improvement period; hearing; transcript.

1 (a) In any proceeding under the provisions of this article,

2 the child, his parents, his custodian or other persons standing
3 in loco parentis to him, such persons other than the child being
4 hereinafter referred to as other party or parties, shall have the
5 right to be represented by counsel at every state of the pro-
6 ceedings and shall be informed by the court of their right to be
7 so represented and that if they cannot pay for the services of
8 counsel, that counsel will be appointed. If the child or other
9 parties have not retained counsel and the child and other
10 parties cannot pay for the services of counsel, the court
11 shall, by order entered of record, at least ten days prior
12 to the date set for hearing, appoint an attorney or attorneys
13 to represent the child and other party or parties and so
14 inform the parties. Under no circumstances may the same
15 attorney represent both the child and the other party or
16 parties; however, if more than one child from a family is
17 involved in the proceeding, one attorney may represent all
18 the children. The court may allow to each attorney so
19 appointed a fee in the same amount which appointed counsel
20 can receive in felony cases.

21 (b) In any proceeding under this article, the parents or
22 custodians may, prior to final hearing, move to be allowed
23 an improvement period of three to twelve months in order to
24 remedy the circumstances or alleged circumstances upon which
25 the proceeding is based. The court shall allow such an im-
26 provement period unless it finds compelling circumstances to
27 justify a denial thereof, but may require temporary custody in
28 the state department or another agency during the improve-
29 ment period.

30 (c) In any proceeding under this article, the party or
31 parties having custody of the child shall be afforded a mean-
32 ingful opportunity to be heard, including the opportunity to
33 testify and to present and cross-examine witnesses. The
34 petition shall not be taken as confessed. A transcript or re-
35 cording shall be made of all proceedings unless waived by all
36 parties to the proceeding. The rules of evidence shall apply.
37 Where relevant, the court shall consider the efforts of the
38 state department to remedy the alleged circumstances. At the
39 conclusion of the hearing the court shall make a determination
40 based upon the evidence and shall make findings of fact and

41 conclusions of law as to whether such child is abused or
42 neglected, which shall be incorporated into the order of the
43 court. The findings must be based upon conditions existing
44 at the time of the filing of the petition and proven by clear
45 and convincing proof.

46 (d) Following the court's determination, it shall be in-
47 quired of the parents or custodians whether or not appeal
48 is desired and the response transcribed. A negative response
49 shall not be construed as a waiver. The evidence shall be
50 transcribed and made available to the parties or their counsel
51 as soon as practicable, if the same is required for purposes of
52 further proceedings. If an indigent person intends to pursue
53 further proceedings, the court reporter shall furnish a trans-
54 cript of the hearing without cost to the indigent person, if an
55 affidavit is filed stating that he cannot pay therefor.

§49-6-9. Custody in emergency situations.

1 (a) A child believed to be a neglected child or an abused
2 child may be taken into custody without the court order other-
3 wise required by section three of this article by a law-
4 enforcement officer (1) if the child is abandoned as defined
5 in subsection (g) of this section, or (2) if such officer deter-
6 mines that the child is in a condition requiring emergency
7 medical treatment by a physician and the child's parents,
8 parent, guardian or custodian refuses to permit such treat-
9 ment, or is unavailable for consent. A child who
10 suffers from a condition requiring emergency medical
11 treatment, whose parents, parent, guardian or custodian
12 refuses to permit the providing of such emergency medical
13 treatment, may be retained in a hospital by a physician against
14 the will of such parents, parent, guardian or custodian, as
15 provided in subsection (c) of this section.

16 (b) A child taken into protective custody as abandoned
17 under the provisions of this section may be housed by the
18 state department or in any authorized child shelter facility.
19 The authority to hold such child in protective custody as
20 abandoned, absent a petition and proper order granting
21 temporary custody pursuant to section three of this article,
22 shall terminate by operation of law upon the happening of

23 either of the following events, whichever shall first occur:
24 (1) the expiration of ninety-six hours from the time the child
25 is initially taken into protective custody, or (2) the expiration
26 of the circumstances which initially warranted the determina-
27 tion of abandonment. No child may be considered abandoned
28 and custody withheld from such child's parents, parent,
29 guardian or custodian presenting themselves, himself or her-
30 self in a fit and proper condition and requesting physical
31 custody of such child. No child may be removed from a
32 place of residence as abandoned under this section until after
33 (1) all reasonable efforts to make inquiries and arrangements
34 with neighbors, relatives and friends have been exhausted;
35 or if no such arrangements can be made, (2) the state de-
36 partment may place in the residence a home services
37 worker with the child for a period of not less than
38 twelve hours to await the return of such child's parents,
39 parent, guardian or custodian. Prior to taking a child into
40 protective custody as abandoned at a place at or near
41 the residence of such child, the law-enforcement officer
42 shall post a typed or legibly handwritten notice at the
43 place the child is found, informing the parents, parent,
44 guardian or custodian that the child was taken by a law-
45 enforcement officer, the name, address and office telephone
46 number of the officer, the place and telephone number where
47 information can continuously be obtained as to the child's
48 whereabouts, and if known, the worker for the state department
49 having responsibility for the child.

50 (c) A child taken into protective custody pursuant to
51 the provisions of this section for emergency medical treat-
52 ment may be held in a hospital under the care of a phy-
53 sician against the will of such child's parents, parent, guar-
54 dian or custodian for a period not to exceed ninety-six
55 hours. The parents, parent, guardian or custodian may not
56 be denied the right to see or visit with such child in a
57 hospital. The authority to retain a child in protective
58 custody in a hospital as requiring emergency medical
59 treatment shall terminate by operation of law upon the
60 happening of either of the following events, whichever
61 shall first occur: (1) When the condition, in the opinion
62 of the physician, no longer required emergency hospital-

63 ization, or (2) upon the expiration of ninety-six hours
64 from the initiation of custody, unless within such time,
65 a petition is presented and a proper order obtained from
66 the circuit court.

67 (d) Prior to assuming custody of a child from a law-
68 enforcement officer, pursuant to the provisions of this section,
69 a physician or worker from the state department shall require
70 a typed or legibly handwritten statement from such officer
71 identifying such officer's name, address and office telephone
72 number and specifying all the facts upon which the decision to
73 take the child into protective custody was based, and the
74 date, time and place of the taking.

75 (e) Any worker for the state department assuming custody
76 of a child pursuant to the provisions of this section shall
77 immediately notify the parents, parent, guardian or custodian
78 of the child of the taking of such custody and the reasons
79 therefor, if the whereabouts of the parents, parent, guardian
80 or custodian are known or can be discovered with due
81 diligence; and if not, notice and explanation shall be given
82 to the child's closest relative, if his or her whereabouts are
83 known or can be discovered with due diligence within a
84 reasonable time. An inquiry shall be made of relatives and
85 neighbors, and if a relative or appropriate neighbor is willing
86 to assume custody of such child, such child shall temporarily
87 be placed in such custody.

88 (f) No child shall be taken into custody under circum-
89 stances not justified by this section or pursuant to section
90 three of this article without appropriate process. Any re-
91 tention of a child or order for retention of a child not
92 complying with the time limits and other requirements speci-
93 fied in this article shall be void by operation of law.

94 (g) As used in this section:

95 (1) "Abandoned" means to be without supervision or
96 shelter for an unreasonable period of time in light of the
97 child's age and the ability to care for himself or herself in
98 circumstances presenting an immediate threat of serious harm
99 to such child;

100 (2) A “law-enforcement officer” means a law-enforcement
101 officer of the department of public safety, a municipality or
102 county sheriff’s department;

103 (3) A “condition requiring emergency medical treatment”
104 means a condition which, if left untreated for a period of a
105 few hours, may result in permanent physical damage; such a
106 condition includes, but is not limited to, profuse or arterial
107 bleeding, dislocation or fracture, unconsciousness and evidence
108 of ingestion of significant amounts of a poisonous substance.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1C. BAIL.

§62-1C-17a. Bail in situations of alleged child abuse.

1 When the offense charged is an assault or other offense
2 against a child who is defined in chapter forty-nine of this
3 code, it may be a condition of bond that the defendant shall
4 not live in the same residence as the victim of the alleged
5 offense, and the court may make such other conditions of
6 bond with respect to contact with the victim as it deems
7 necessary under the circumstances to protect the child.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence C. Chastain, Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Todd C. Willis
Clerk of the Senate

VA Blankenship
Clerk of the House of Delegates

W. T. Brantley
President of the Senate

Clay M. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *26*
day of *March*, 1980.

John R. Raley, Jr.
Governor

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OFFICE OF THE GOVERNOR

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