

No: 614

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

SENATE BILL NO. 614

(By Senators TANKOVICH, MR. PRESIDENT (By Request)
AND HARMAN)



PASSED MARCH 12, 1988

In Effect 90 days from Passage



ENROLLED

Senate Bill No. 614

(By SENATORS TONKOVICH, MR. PRESIDENT (By REQUEST) AND HARMAN)

[Passed March 12, 1988; in effect ninety days from passage.]

AN ACT to amend and reenact section sixteen, article two; section thirteen, article five; and sections three, five and eight, article six, all of chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to state eligibility for Title IV-B and Title IV-E funds by requiring court review of voluntary placements within one hundred eighty days; requiring specific court language in court orders; and requiring court hearings for all foster care cases after twelve months.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article two; section thirteen, article five; and sections three, five and eight, article six, all of chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

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
- 2 empowered to provide care, support and protective services
- 3 for children who are handicapped by dependency, neglect,

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

15 The department of human services shall provide care in
16 special boarding homes for children needing detention
17 pending disposition by a court having juvenile jurisdiction
18 or temporary care following such court action.

19 Within one hundred eighty days of the date of the
20 signatures to a voluntary placement agreement, after
21 receipt of physical custody, the state department shall file
22 with the court a petition for review of the placement, stating
23 the child's situation and the circumstance that gives rise to
24 the voluntary placement. If the department intends to
25 extend the voluntary placement agreement, the department
26 shall file with the court a copy of the child's case plan. The
27 court shall appoint an attorney for the child, who shall also
28 receive a copy of the case plan. The court shall schedule a
29 hearing and shall give notice of the time and place and right
30 to be present at such hearing to: the child's attorney; the
31 child, if twelve years of age or older; the child's parents or
32 guardians; the child's foster parents; and any other such
33 persons as the court may in its discretion direct. The child's
34 presence at such hearing may be waived by the child's
35 attorney at the request of the child or if the child would
36 suffer emotional harm. At the conclusion of the
37 proceedings, but no later than one hundred eighty days
38 after the date of the signatures to the voluntary placement
39 agreement, the court shall enter an order determining
40 whether or not continuation of the voluntary placement is
41 in the best interests of the child; specifying under what
42 conditions the child's placement shall continue; and
43 specifying whether or not the department has made
44 reasonable efforts to reunify the family.

ARTICLE 5. JUVENILE PROCEEDINGS.**§49-5-13. Disposition; appeal.**

1 (a) In aid of disposition, the juvenile probation officer or
2 state department worker assigned to the court shall, upon
3 request of the court, make an investigation of the
4 environment of the child and the alternative dispositions
5 possible. The court, upon its own motion, or upon request of
6 counsel, may order a psychological examination of the
7 child. The report of such examination and other
8 investigative and social reports shall not be made available
9 to the court until after the adjudicatory hearing. Unless
10 waived, copies of the report shall be provided to counsel for
11 the petitioner and counsel for the child no later than
12 seventy-two hours prior to the dispositional hearing.

13 (b) Following the adjudication, the court shall conduct
14 the dispositional proceeding, giving all parties an
15 opportunity to be heard. In disposition the court shall not be
16 limited to the relief sought in the petition and shall give
17 precedence to the least restrictive of the following
18 alternatives consistent with the best interests and welfare
19 of the public and the child:

20 (1) Dismiss the petition;

21 (2) Refer the child and the child's parent or custodian to
22 a community agency for needed assistance and dismiss the
23 petition;

24 (3) Upon a finding that the child is in need of extra-
25 parental supervision (A) place the child under the
26 supervision of a probation officer of the court or of the court
27 of the county where the child has his or her usual place of
28 abode, or other person while leaving the child in custody of
29 his or her parent or custodian and (B) prescribe a program
30 of treatment or therapy or limit the child's activities under
31 terms which are reasonable and within the child's ability to
32 perform;

33 (4) Upon a finding that a parent or custodian is not
34 willing or able to take custody of the child, that a child is not
35 willing to reside in the custody of his parent or custodian, or
36 that a parent or custodian cannot provide the necessary
37 supervision and care of the child, the court may place the
38 child in temporary foster care or temporarily commit the
39 child to the state department or a child welfare agency. The
40 court order shall state that continuation in the home is

41 contrary to the best interest of the child and why; and
42 whether or not the state department made a reasonable
43 effort to prevent the placement or that the emergency
44 situation made such efforts unreasonable or impossible.
45 Whenever the court transfers custody of a youth to the
46 department of human services, an appropriate order of
47 financial support by the parents or guardians shall be
48 entered in accordance with section five, article seven of this
49 chapter and guidelines promulgated by the supreme court
50 of appeals;

51 (5) Upon a finding that no less restrictive alternative
52 would accomplish the requisite rehabilitation of the child,
53 and upon an adjudication of delinquency pursuant to
54 subdivision (1), section four, article one of this chapter,
55 commit the child to an industrial home or correctional
56 institution for children. Commitments shall not exceed the
57 maximum term for which an adult could have been
58 sentenced for the same offense, with discretion as to
59 discharge to rest with the director of the institution, who
60 may release the child and return him to the court for further
61 disposition. The order shall state that continuation in the
62 home is contrary to the best interests of the child and why;
63 and whether or not the state department made a reasonable
64 effort to prevent the placement or that the emergency
65 situation made such efforts unreasonable or impossible;

66 (6) Upon an adjudication of delinquency pursuant to
67 subsection (3) or (4), section four, article one of this chapter,
68 and upon a finding that the child is so totally
69 unmanageable, ungovernable and antisocial that the child
70 is amenable to no treatment or restraint short of
71 incarceration, commit the child to a rehabilitative facility
72 devoted exclusively to the custody and rehabilitation of
73 children adjudicated delinquent pursuant to said
74 subsection (3) or (4). Commitments shall not exceed the
75 maximum period of one year with discretion as to discharge
76 to rest with the director of the institution, who may release
77 the child and return him or her to the court for further
78 disposition. The order shall state that continuation in the
79 home is contrary to the best interests of the child and why;
80 and whether or not the state department made a reasonable
81 effort to prevent the placement or that the emergency
82 situation made such efforts unreasonable or impossible; or

83 (7) After a hearing conducted under the procedures set
84 out in subsections (c) and (d), section four, article five,
85 chapter twenty-seven of the code, commit the child to a
86 mental health facility in accordance with the child's
87 treatment plan; the director may release a child and return
88 him to the court for further disposition. The order shall
89 state that continuation in the home is contrary to the best
90 interests of the child and why; and whether or not the state
91 department made a reasonable effort to prevent the
92 placement or that the emergency situation made such
93 efforts unreasonable or impossible.

94 (c) The disposition of the child shall not be affected by
95 the fact that the child demanded a trial by jury or made a
96 plea of denial. Any dispositional order is subject to appeal
97 to the supreme court of appeals.

98 (d) Following disposition, it shall be inquired of the
99 respondent whether or not appeal is desired and the
100 response transcribed; a negative response shall not be
101 construed as a waiver. The evidence shall be transcribed as
102 soon as practicable and made available to the child or his or
103 her counsel, if the same is requested for purposes of further
104 proceedings. A judge may grant a stay of execution pending
105 further proceedings.

106 (e) Notwithstanding any other provision of this code to
107 the contrary, in the event a child charged with delinquency
108 under this chapter is transferred to adult jurisdiction and
109 there tried and convicted, the court may nevertheless, in
110 lieu of sentencing such person as an adult, make its
111 disposition in accordance with this section.

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

§49-6-3. Petition to court when child believed neglected or abused — Temporary custody.

1 (a) Upon the filing of a petition, the court may order that
2 the child alleged to be an abused or neglected child be
3 delivered for not more than ten days into the custody of the
4 state department or a responsible relative, pending a
5 preliminary hearing, if it finds that: (1) There exists
6 imminent danger to the physical well-being of the child,
7 and (2) there are no reasonably available alternatives to
8 removal of the child, including, but not limited to, the
9 provision of medical, psychiatric, psychological or

10 homemaking services in the child's present custody. In a
11 case where there is more than one child in the home, the
12 petition shall so state, and notwithstanding the fact that the
13 allegations of abuse or neglect may pertain to less than all of
14 such children, each child in the home for whom relief is
15 sought shall be made a party to the proceeding. Even though
16 the acts of abuse or neglect alleged in the petition were not
17 directed against a specific child who is named in the
18 petition, the court shall order the removal of such child,
19 pending final disposition, if it finds that there exists
20 imminent danger to the physical well-being of the child and
21 a lack of reasonable available alternatives to removal. The
22 initial order directing such custody shall contain an order
23 appointing counsel and scheduling the preliminary
24 hearing, and upon its service shall require the immediate
25 transfer of custody of such child or children to the state
26 department or a responsible relative. The court order shall
27 state: (1) That continuation in the home is contrary to the
28 best interests of the child and why; and (2) whether or not
29 the state department made a reasonable effort to prevent
30 the placement or that the emergency situation made such
31 efforts unreasonable or impossible. The order may also
32 direct any party or the department to initiate or become
33 involved in services to facilitate reunification of the family.

34 (b) Whether or not the court orders immediate transfer
35 of custody as provided in subsection (a) of this section, if the
36 facts alleged in the petition demonstrate to the court that
37 there exists imminent danger to the child, the court may
38 schedule a preliminary hearing giving the respondents at
39 least five days' actual notice. If the court finds at the
40 preliminary hearing that there are no alternatives less
41 drastic than removal of the child and that a hearing on the
42 petition cannot be scheduled in the interim period, the court
43 may order that the child be delivered into the temporary
44 custody of the state department or an appropriate person or
45 agency for a period not exceeding sixty days: *Provided*,
46 That the court order shall state (1) that continuation in the
47 home is contrary to the best interests of the child and state
48 the reasons therefore; (2) whether or not the department
49 made reasonable efforts to prevent the child's removal from
50 his or her home; (3) whether or not the state department
51 made a reasonable effort to prevent the placement or that
52 the emergency situation made such efforts unreasonable or

53 impossible; and (4) what efforts should be made by the
54 department to facilitate the child's return home: *Provided,*
55 *however,* That if the court grants an improvement period as
56 provided in subsection (b), section two of this article, the
57 sixty-day limit upon temporary custody may be waived.

58 (c) If a child or children shall, in the presence of a child
59 protective service worker of the department of human
60 services, be in an emergency situation which constitutes an
61 imminent danger to the physical well-being of the child or
62 children, as that phrase is defined in section three, article
63 one of this chapter, and if such worker has probable cause to
64 believe that the child or children will suffer additional child
65 abuse or neglect or will be removed from the county before a
66 petition can be filed and temporary custody can be ordered,
67 the worker may, prior to the filing of a petition, take the
68 child or children into his or her custody without a court
69 order: *Provided,* That after taking custody of such child or
70 children prior to the filing of a petition, the worker shall
71 forthwith appear before a circuit judge or a juvenile referee
72 of the county wherein custody was taken, or if no such judge
73 or referee be available, before a circuit judge or a juvenile
74 referee of an adjoining county, and shall immediately apply
75 for an order ratifying the emergency custody of the child
76 pending the filing of a petition. The circuit court of every
77 county in the state shall appoint at least one of the
78 magistrates of the county to act as a juvenile referee, who
79 shall serve at the will and pleasure of the appointing court,
80 and who shall perform the functions prescribed for such
81 position by the provisions of this subsection. The parents,
82 guardians or custodians of the child or children may be
83 present at the time and place of application for an order
84 ratifying custody, and if at the time the child or children are
85 taken into custody by the worker, the worker knows which
86 judge or referee is to receive the application, the worker
87 shall so inform the parents, guardians or custodians. The
88 application for emergency custody may be on forms
89 prescribed by the supreme court of appeals or prepared by
90 the prosecuting attorney or the applicant, and shall set
91 forth facts from which it may be determined that the
92 probable cause described above in this subsection exists.
93 Upon such sworn testimony or other evidence as the judge
94 or referee deems sufficient, the judge or referee may order
95 the emergency taking by the worker to be ratified. If

96 appropriate under the circumstances, the order may
97 include authorization for an examination as provided for in
98 subsection (b), section four of this article. If a referee issues
99 such an order, the referee shall by telephonic
100 communication have such order orally confirmed by a
101 circuit judge of the circuit or an adjoining circuit who shall
102 on the next judicial day enter an order of confirmation. If
103 the emergency taking is ratified by the judge or referee,
104 emergency custody of the child or children shall be vested in
105 the state department until the end of the next judicial day,
106 at which time any such child taken into emergency custody
107 shall be returned to the custody of his or her parent,
108 guardian or custodian unless a petition has been filed and
109 custody of the child has been transferred under the
110 provisions of section three of this article.

§49-6-5. Disposition of neglected or abused children.

1 (a) Following a determination pursuant to section two
2 of this article wherein the court finds a child to be abused or
3 neglected, the department shall file with the court a copy of
4 the child's case plan, including the permanency plan for the
5 child. The term case plan means a written document that
6 includes, where applicable, the requirements of the family
7 case plan as provided for in section three, article six-d of
8 this chapter and that also includes at least the following: A
9 description of the type of home or institution in which the
10 child is to be placed, including a discussion of the
11 appropriateness of the placement and how the agency
12 which is responsible for the child plans to assure that the
13 child receives proper care and that services are provided to
14 the parents, child and foster parents in order to improve the
15 conditions in the parent(s) home, facilitate return of the
16 child to his or her own home or the permanent placement of
17 the child, and address the needs of the child while in foster
18 care, including a discussion of the appropriateness of the
19 services that have been provided to the child. The term
20 permanency plan refers to that part of the case plan which is
21 designed to achieve a permanent home for the child in the
22 least restrictive setting available. The plan must document
23 efforts to ensure that the child is returned home within
24 approximate time lines for reunification as set out in the
25 plan. If reunification is not the permanency plan for the
26 child, the plan must state why reunification is not

27 appropriate and detail the alternative placement for the
28 child to include approximate time lines for when such
29 placement is expected to become a permanent placement.
30 This case plan shall serve as the family case plan for parents
31 of abused or neglected children. Copies of the child's case
32 plan shall be sent to the child's attorney and parent,
33 guardian or custodian at least five days prior to the
34 dispositional hearing. The court shall forthwith proceed to
35 disposition giving both the petitioner and respondents an
36 opportunity to be heard. The court shall give precedence to
37 dispositions in the following sequence:

38 (1) Dismiss the petition;

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

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

44 (4) Order terms of supervision calculated to assist the
45 child and the abusing parent or parents which prescribe the
46 manner of supervision and care of the child and which are
47 within the ability of the parent or custodian to perform;

48 (5) Upon a finding that the abusing parent or parents
49 are presently unwilling or unable to provide adequately for
50 the child's needs, commit the child temporarily to the
51 custody of the state department, a licensed private child
52 welfare agency or a suitable person who may be appointed
53 guardian by the court. The court order shall state: (1) That
54 continuation in the home is contrary to the best interests of
55 the child and why; and (2) whether or not the state
56 department made a reasonable effort to prevent the
57 placement to include a statement of what efforts were made
58 or that the emergency situation made such efforts
59 unreasonable or impossible; and (3) the specific
60 circumstances of the situation which makes such efforts
61 unreasonable if services were not offered by the
62 department. The court order shall also determine under
63 what circumstances the child's commitment to the
64 department shall continue. Considerations pertinent to the
65 determination include whether the child should (1) be
66 continued in foster care for a specified period, (2) should be
67 considered for adoption, (3) because of a child's special
68 needs or circumstances, be continued in foster care on a
69 permanent or long term basis, or (4) be continued in foster

70 care until reunification is achieved. The court may order
71 services to meet the special needs of the child. Whenever the
72 court transfers custody of a youth to the department of
73 human services, an appropriate order of financial support
74 by the parents or guardians shall be entered in accordance
75 with section five, article seven of this chapter; or

76 (6) Upon a finding that there is no reasonable likelihood
77 that the conditions of neglect or abuse can be substantially
78 corrected in the near future, and when necessary for the
79 welfare of the child, terminate the parental or custodial
80 rights and responsibilities and commit the child to the
81 permanent guardianship of the state department or a
82 licensed child welfare agency. If the court shall so find, then
83 in fixing its dispositional order, the court shall consider the
84 following factors: (1) The child's need for continuity of care
85 and caretakers; (2) the amount of time required for the child
86 to be integrated into a stable and permanent home
87 environment; and (3) other factors as the court considers
88 necessary and proper. Notwithstanding any other
89 provisions of this article, the permanent parental rights
90 shall not be terminated if a child fourteen years of age or
91 older or otherwise of an age of discretion as determined by
92 the court, objects to such termination. No adoption of a
93 child shall take place until all proceedings for termination
94 of parental rights under this article and appeals thereof are
95 final. In determining whether or not parental rights should
96 be terminated, the court shall consider the efforts made by
97 the department to provide remedial and reunification
98 services to the parent. The court order shall state: (1) That
99 continuation in the home is not in the best interests of the
100 child and why; and (2) why reunification is not in the best
101 interests of the child; and (3) whether or not the state
102 department made a reasonable effort to prevent the
103 placement or that the emergency situation made such
104 efforts unreasonable or impossible; and (4) whether or not
105 the state department made a reasonable effort to reunify the
106 family including a description of what efforts were made or
107 that such efforts were unreasonable due to specific
108 circumstances.

109 (b) As used in this section, "no reasonable likelihood
110 that conditions of neglect or abuse can be substantially
111 corrected" shall mean that, based upon the evidence before
112 the court, the abusing adult or adults have demonstrated an

113 inadequate capacity to solve the problems of abuse or
114 neglect, on their own or with help. Such conditions shall be
115 deemed to exist in the following circumstances, which shall
116 not be exclusive:

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

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

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

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

137 (5) The abusing parent or parents have repeatedly or
138 seriously injured the child physically or emotionally, or
139 have sexually abused or sexually exploited the child, and
140 the degree of family stress and the potential for further
141 abuse and neglect are so great as to preclude the use of
142 resources to mitigate or resolve family problems or assist
143 the abusing parent or parents in fulfilling their
144 responsibilities to the child; or

145 (6) The abusing parent or parents have incurred
146 emotional illness, mental illness or mental deficiency of
147 such duration or nature as to render such parent or parents
148 incapable of exercising proper parenting skills or
149 sufficiently improving the adequacy of such skills.

150 (c) The court may as an alternative disposition allow to
151 the parents or custodians an improvement period not to
152 exceed twelve months. During this period the parental
153 rights shall not be permanently terminated and the court
154 shall require the parent to rectify the conditions upon
155 which the determination was based. No more than one such

156 post-dispositional improvement period may be granted.
157 The court may order the child to be placed with the parents,
158 a relative, the state department or other appropriate
159 placement during the period. At the end of the period the
160 court shall hold a hearing to determine whether the
161 conditions have been adequately improved, and at the
162 conclusion of such hearing, shall make a further
163 dispositional order in accordance with this section.

§49-6-8. Foster care review; annual reports to the court.

1 (a) If, twelve months after receipt (by the state
2 department or its authorized agent) of physical custody of a
3 child either by a court ordered placement or by a voluntary
4 agreement, the state department has not placed a child in
5 permanent foster care or an adoptive home or placed the
6 child with a natural parent, the state department shall file
7 with the court a petition for review of the case. The
8 department shall also file with the court a report detailing
9 the efforts that have been made to place the child in a
10 permanent home and copies of the child's case plan
11 including the permanency plan as defined in section five,
12 article six of this chapter. Copies of the report shall be sent
13 to the child's attorney and be made available to the child's
14 parent(s) or guardian. "Permanent foster care" shall mean a
15 written arrangement with an adult or adults following a
16 six-month trial period whereby the state department places
17 the care, custody and control of a child until the child's
18 emancipation with such adult or adults. The court shall
19 schedule a hearing in chambers, giving notice and the right
20 to be present to: The child's attorney; the child, if twelve
21 years of age or older; the child's parents; the child's
22 guardians; the child's foster parents; and such other
23 persons as the court may in its discretion direct. The child's
24 presence may be waived by the child's attorney at the
25 request of the child or if the child would suffer emotional
26 harm. The purpose of the hearing is to review the child's
27 case, to determine whether and under what conditions the
28 child's commitment to the department shall continue, and
29 to determine what efforts are necessary to provide the child
30 with a permanent home. At the conclusion of the hearing
31 the court shall in accordance with the best interests of the
32 child enter an appropriate order of disposition. The court
33 order shall state (1) whether or not the department made

34 reasonable effort to prevent out-of-home placement or that
 35 the specific situation made such effort unreasonable, (2) the
 36 permanency plan for the child, and (3) services required to
 37 meet the child's needs. The court shall possess continuing
 38 jurisdiction over cases reviewed under this section for so
 39 long as a child remains in temporary foster care, or, when a
 40 child is returned to his or her natural parents subject to
 41 conditions imposed by the court, for so long as the
 42 conditions are effective.

43 (b) The state department shall file a supplementary
 44 petition for review with the court within eighteen months
 45 and every eighteen months thereafter for every child that
 46 remains in the physical or legal custody of the state
 47 department until the child is placed in an adoptive home or
 48 permanent foster care or returned to his or her parents.

49 (c) The state department shall annually report to the
 50 court the current status of the placements of children in
 51 permanent care and custody of the state department who
 52 have not been adopted.

53 (d) Nothing in this article precludes any party from
 54 petitioning the court for review of the child's case at any
 55 time. The court shall grant such petition upon a showing
 56 that there is a change in circumstance or needs of the child
 57 that warrants court review.

State Department of Children and Family Services

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

Bruce O. Allittoms
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Judd C. With
.....
Clerk of the Senate

Donald J. Kopp
.....
Clerk of the House of Delegates

Dan Tomlin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *Approved* this the *28th*
March day of 1988.

Luca Paone Jr.
.....
Governor



PRESENTED TO THE

GOVERNOR

Date 3/27/88

Time 3:08 p.m.

RECEIVED
1989 MAR 31 AM 10:50
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE