

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



ENROLLED

SENATE BILL NO. 401

(By Senators Shaffer and Pitt)



PASSED March 8, 1990

In Effect 90 days from Passage

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Senate Bill No. 401

(BY SENATORS WOLFE AND PRITT)

[Passed March 8, 1990; In effect ninety days from passage.]

AN ACT to amend and reenact section three, article six, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the length of time the department of human services may keep an abused or neglected child in its custody during emergency situations.

Be it enacted by the Legislature of West Virginia:

That section three, article six, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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
2 that the child alleged to be an abused or neglected
3 child be delivered for not more than ten days into the
4 custody of the state department or a responsible
5 relative, pending a preliminary hearing, if it finds
6 that: (1) There exists imminent danger to the physical

7 well-being of the child, and (2) there are no reasonably
8 available alternatives to removal of the child, includ-
9 ing, but not limited to, the provision of medical,
10 psychiatric, psychological or homemaking services in
11 the child's present custody. In a case where there is
12 more than one child in the home, the petition shall so
13 state, and notwithstanding the fact that the allegations
14 of abuse or neglect may pertain to less than all of such
15 children, each child in the home for whom relief is
16 sought shall be made a party to the proceeding. Even
17 though the acts of abuse or neglect alleged in the
18 petition were not directed against a specific child who
19 is named in the petition, the court shall order the
20 removal of such child, pending final disposition, if it
21 finds that there exists imminent danger to the physical
22 well-being of the child and a lack of reasonable
23 available alternatives to removal. The initial order
24 directing such custody shall contain an order appoint-
25 ing counsel and scheduling the preliminary hearing,
26 and upon its service shall require the immediate
27 transfer of custody of such child or children to the
28 state department or a responsible relative. The court
29 order shall state: (1) That continuation in the home is
30 contrary to the best interests of the child and why; and
31 (2) whether or not the state department made a
32 reasonable effort to prevent the placement or that the
33 emergency situation made such efforts unreasonable
34 or impossible. The order may also direct any party or
35 the department to initiate or become involved in
36 services to facilitate reunification of the family.

37 (b) Whether or not the court orders immediate
38 transfer of custody as provided in subsection (a) of this
39 section, if the facts alleged in the petition demonstrate
40 to the court that there exists imminent danger to the
41 child, the court may schedule a preliminary hearing
42 giving the respondents at least five days' actual notice.
43 If the court finds at the preliminary hearing that there
44 are no alternatives less drastic than removal of the
45 child and that a hearing on the petition cannot be
46 scheduled in the interim period, the court may order
47 that the child be delivered into the temporary custody
48 of the state department or an appropriate person or

49 agency for a period not exceeding sixty days: *Provided*,
50 That the court order shall state (1) that continuation in
51 the home is contrary to the best interests of the child
52 and state the reasons therefor; (2) whether or not the
53 department made reasonable efforts to prevent the
54 child's removal from his or her home; (3) whether or
55 not the state department made a reasonable effort to
56 prevent the placement or that the emergency situation
57 made such efforts unreasonable or impossible; and (4)
58 what efforts should be made by the department to
59 facilitate the child's return home: *Provided, however*,
60 That if the court grants an improvement period as
61 provided in subsection (b), section two of this article,
62 the sixty-day limit upon temporary custody may be
63 waived.

64 (c) If a child or children shall, in the presence of a
65 child protective service worker of the department of
66 human services, be in an emergency situation which
67 constitutes an imminent danger to the physical well-
68 being of the child or children, as that phrase is defined
69 in section three, article one of this chapter, and if such
70 worker has probable cause to believe that the child or
71 children will suffer additional child abuse or neglect or
72 will be removed from the county before a petition can
73 be filed and temporary custody can be ordered, the
74 worker may, prior to the filing of a petition, take the
75 child or children into his or her custody without a
76 court order: *Provided*, That after taking custody of
77 such child or children prior to the filing of a petition,
78 the worker shall forthwith appear before a circuit
79 judge or a juvenile referee of the county wherein
80 custody was taken, or if no such judge or referee be
81 available, before a circuit judge or a juvenile referee
82 of an adjoining county, and shall immediately apply
83 for an order ratifying the emergency custody of the
84 child pending the filing of a petition. The circuit court
85 of every county in the state shall appoint at least one
86 of the magistrates of the county to act as a juvenile
87 referee, who shall serve at the will and pleasure of the
88 appointing court, and who shall perform the functions
89 prescribed for such position by the provisions of this
90 subsection. The parents, guardians or custodians of the

91 child or children may be present at the time and place
92 of application for an order ratifying custody, and if at
93 the time the child or children are taken into custody
94 by the worker, the worker knows which judge or
95 referee is to receive the application, the worker shall
96 so inform the parents, guardians or custodians. The
97 application for emergency custody may be on forms
98 prescribed by the supreme court of appeals or pre-
99 pared by the prosecuting attorney or the applicant,
100 and shall set forth facts from which it may be deter-
101 mined that the probable cause described above in this
102 subsection exists. Upon such sworn testimony or other
103 evidence as the judge or referee deems sufficient, the
104 judge or referee may order the emergency taking by
105 the worker to be ratified. If appropriate under the
106 circumstances, the order may include authorization
107 for an examination as provided for in subsection (b),
108 section four of this article. If a referee issues such an
109 order, the referee shall by telephonic communication
110 have such order orally confirmed by a circuit judge of
111 the circuit or an adjoining circuit who shall on the
112 next judicial day enter an order of confirmation. If the
113 emergency taking is ratified by the judge or referee,
114 emergency custody of the child or children shall be
115 vested in the state department until the expiration of
116 the next two judicial days, at which time any such
117 child taken into emergency custody shall be returned
118 to the custody of his or her parent, guardian or
119 custodian unless a petition has been filed and custody
120 of the child has been transferred under the provisions
121 of section three of this article.

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

Fredrick L. Kirk
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Parseth E. Malone
Clerk of the Senate

Donald H. Papp
Clerk of the House of Delegates

Leif Sundt
President of the Senate

Robert Chubb
Speaker House of Delegates

The within *is approved* this the *20th*
day of *March* 1990.
Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/14/90

Time 2:44 PM

RECEIVED

1500 MAR 20 PM 4: 54

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE