

FILED

2005 APR 29 A 11:30

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



# ENROLLED

## House Bill No. 2271

(By Delegates Mahan and Amores)



Passed April 9, 2005

In Effect Ninety Days from Passage

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**E N R O L L E D**

## **H. B. 2271**

(BY DELEGATES MAHAN AND AMORES)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §49-6-4 of the Code of West Virginia, 1931, as amended, relating to the payment of expert fees in child abuse and neglect cases.

*Be it enacted by the Legislature of West Virginia:*

That §49-6-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

#### **§49-6-4. Medical and mental examinations.**

1       (a) At any time during proceedings under this article the  
2 court may, upon its own motion or upon motion of the child or  
3 other parties, order the child or other parties to be examined by  
4 a physician, psychologist or psychiatrist, and may require  
5 testimony from such expert, subject to cross-examination and  
6 the rules of evidence: *Provided*, That the court shall not  
7 terminate parental or custodial rights of a party solely because  
8 the party refuses to submit to the examination, nor shall the

9 court hold such party in contempt for refusing to submit to an  
10 examination. The physician, psychologist or psychiatrist shall  
11 be allowed to testify as to the conclusions reached from  
12 hospital, medical, psychological or laboratory records provided  
13 the same are produced at the hearing. If the child, parent or  
14 custodian is indigent, such witnesses shall be compensated out  
15 of the Treasury of the State, upon certificate of the court  
16 wherein the case is pending. No evidence acquired as a result of  
17 any such examination of the parent or any other person having  
18 custody of the child may be used against such person in any  
19 subsequent criminal proceedings against such person.

20 (b) If a person with authority to file a petition under the  
21 provisions of this article shall have probable cause to believe  
22 that evidence exists that a child has been abused or neglected  
23 and that such evidence may be found by a medical examination,  
24 the person may apply to a circuit judge or juvenile referee for  
25 an order to take such child into custody for delivery to a  
26 physician or hospital for examination. The application may be  
27 on forms prescribed by the Supreme Court of Appeals or  
28 prepared by the prosecuting attorney or the applicant, and shall  
29 set forth facts from which it may be determined that probable  
30 cause exists for such belief. Upon such sworn testimony or  
31 other evidence as the judge or referee deems sufficient, the  
32 judge or referee may order any law-enforcement officer to take  
33 the child into custody and deliver the child to a physician or  
34 hospital for examination. If a referee issues such an order the  
35 referee shall by telephonic communication have such order  
36 orally confirmed by a circuit judge of the circuit or an adjoining  
37 circuit who shall on the next judicial day enter an order of  
38 confirmation. Any child welfare worker and the child's parents,  
39 guardians or custodians may accompany the officer for such  
40 examination. After the examination the officer may return the  
41 child to the custody of his or her parent, guardian or custodian,  
42 retain custody of the child or deliver custody to the state  
43 department until the end of the next judicial day, at which time

44 the child shall be returned to the custody of his or her parent,  
45 guardian or custodian unless a petition has been filed and  
46 custody of the child has been transferred to the department  
47 under the provisions of section three of this article.


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

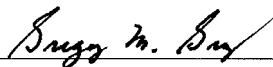
  
Chairman Senate Committee

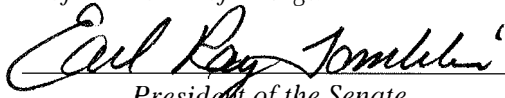
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

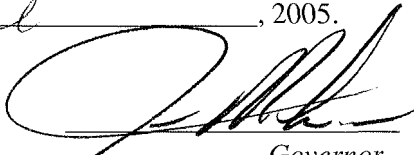
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within- is approved this the 29<sup>th</sup>  
day of April, 2005.

  
Governor

PRESENTED TO THE  
GOVERNOR

APR 26 2005

Time 11:00 am