

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 5214

BY DELEGATE HECKERT

[Passed March 14, 2026; in effect 90 days from
passage (June 12, 2026)]

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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1 AN ACT to amend and reenact §49-4-604 of the Code of West Virginia, 1931, as amended,
2 relating to returning a child home under supervision of the Department of Human Services
3 following a determination of abuse and neglect, requiring a parent, who has been
4 adjudicated to have abused or neglected his or her child and whose abuse or improper
5 use of controlled substances contributed to the situation that resulted in initial removal of
6 the child or where there is credible evidence that the abuse or improper use of controlled
7 substances is ongoing, to undergo drug testing, requiring testing for controlled substances
8 suspected by the court or the department, requiring laboratory confirmation of positive
9 results, prohibiting returning a child home for reunification if either parent residing in the
10 home initially tests positive for an illegal substance or a controlled substance for which he
11 or she does not possess a valid and current prescription or medical cannabis card;
12 requiring department to provide drug test results to the court, guardian *ad litem* and other
13 interested parties where a parent has tested positive for a controlled substance, and
14 requiring the court to schedule a hearing to address the potential impact of the positive
15 result on the court's dispositional order; providing that the drug testing required by this
16 subdivision shall include laboratory confirmation of any positive test result which shall be
17 immediately provided to the court, the guardian *ad litem*, and all parties upon receipt by
18 the department; and providing that the department shall bear the reasonable and
19 necessary costs of the drug testing associated with this subdivision regardless of whether
20 the tests are confirmatory or medical in nature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.

1 (a) *Child and family case plans.* — Following a determination pursuant to §49-4-602 of
2 this code wherein the court finds a child to be abused or neglected, the department shall file with

the court a copy of the child's case plan, including the permanency plan for the child. The term "case plan" means a written document that includes, where applicable, the requirements of the family case plan as provided in §49-4-408 of this code and that also includes, at a minimum, the following:

(1) A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child, and foster or kinship parents in order to improve the conditions that made the child unsafe in the care of his or her parent(s), including any reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C. §12101 *et seq.*, to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

(2) A plan to facilitate the return of the child to his or her own home or the concurrent permanent placement of the child; and address the needs of the child while in kinship or foster care, including a discussion of the appropriateness of the services that have been provided to the child.

The term "permanency plan" refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian should be made at the same time, or concurrent with, reasonable efforts to prevent removal or to make it possible for a child to return to the care of his or her parent(s) safely. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative, concurrent permanent placement plans for the child to include approximate time lines for when the placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected

children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard.

(b) *Requirements for a Guardian ad litem.* —

A guardian *ad litem* appointed pursuant to §49-4-601(f)(1) of this code, shall, in the performance of his or her duties, adhere to the requirements of the Rules of Procedure for Child Abuse and Neglect Proceedings and the Rules of Professional Conduct and such other rules as the West Virginia Supreme Court of Appeals may promulgate, and any appendices thereto, and must meet all educational requirements for the guardian *ad litem*. A guardian *ad litem* may not be paid for his or her services without meeting the certification and educational requirements of the court. The West Virginia Supreme Court of Appeals is requested to provide guidance to the judges of the circuit courts regarding supervision of said guardians *ad litem*. The West Virginia Supreme Court of Appeals is requested to review the Rules of Procedure for Child Abuse and Neglect Proceedings and the Rules of Professional Conduct specific to guardians *ad litem*.

(c) *Disposition decisions.* — The court shall give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

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

(3) (A) Return the child to his or her own home under supervision of the department: *Provided, That* in cases where a parent or parents have been adjudicated, pursuant to this chapter, as having abused or neglected their child, and the order adjudicating the parent or parents contains findings of fact and conclusions of law that the parent or parents abused, or improperly used, controlled substances which contributed to a situation that resulted in the initial

removal of the child; or there is credible evidence to believe that the parent or parents may currently be abusing, or improperly using, controlled substances, prior to returning the child to his or her own home pursuant to this subdivision, the court may require that the parent or parents undergo and successfully pass a drug test which tests for controlled substance reasonably suspected by the court or the department;

(B) If either parent living in the same home to which the child has been returned initially tests positive for a suspected illegal substance, any substance for which the court has ordered the parent be tested, or any substance for which the parent has previously tested positive and the parent does not possess a valid and current prescription relating to the substance for which the parent tested positive, or a valid and current medical cannabis card issued pursuant to the provisions of §16A-1-1 *et seq.* of this code, the department must immediately notify the court, the guardian *ad litem*, and all parties of the results of the initial drug testing, pending laboratory confirmation. Upon receiving notice that a parent has tested positive in the initial drug test, the court may tentatively schedule a hearing to address the potential laboratory confirmation of the initial positive test;

(C) The drug testing required by this subdivision shall include laboratory confirmation of any positive test result which shall be immediately provided to the court, the guardian *ad litem*, and all parties upon receipt by the department;

(D) Notwithstanding any other code provision to the contrary, the department shall bear the reasonable and necessary costs of the drug testing associated with this subdivision regardless of whether the tests are confirmatory or medical in nature.

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

(5) Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the

care, custody, and control of the department, a licensed private child welfare agency, or a suitable person who may be appointed guardian by the court. The court order shall state:

(A) That continuation in the home is contrary to the best interests of the child and why;

(B) Whether or not the department has made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent or eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home;

(C) Whether the department has made reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C. § 12101 *et seq.*, to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

(D) What efforts were made or that the emergency situation made those efforts unreasonable or impossible; and

(E) The specific circumstances of the situation which made those efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child's commitment to the department are to continue. Considerations pertinent to the determination include whether the child should:

(i) Be considered for legal guardianship;

(ii) Be considered for permanent placement with a fit and willing relative; or

(iii) Be placed in another planned permanent living arrangement, but only in cases where the child has attained 16 years of age and the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with §49-4-801 through §49-4-803 of this code;

105 (6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or
106 abuse can be substantially corrected in the near future and, when necessary for the welfare of
107 the child, terminate the parental, custodial and guardianship rights and responsibilities of the
108 abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if
109 there be one, or, if not, to either the permanent guardianship of the department or a licensed child
110 welfare agency. The court may award sole custody of the child to a nonabusing battered parent.
111 If the court shall so find, then in fixing its dispositional order the court shall consider the following
112 factors:

113 (A) The child's need for continuity of care and caretakers;

114 (B) The amount of time required for the child to be integrated into a stable and permanent
115 home environment; and

116 (C) Other factors as the court considers necessary and proper. Notwithstanding any other
117 provision of this article, the court shall give consideration to the wishes of a child 14 years of age
118 or older or otherwise of an age of discretion as determined by the court regarding the permanent
119 termination of parental rights. No adoption of a child shall take place until all proceedings for
120 termination of parental rights under this article and appeals thereof are final. In determining
121 whether or not parental rights should be terminated, the court shall consider the efforts made by
122 the department to provide remedial and reunification services to the parent. The court order shall
123 state:

124 (i) That continuation in the home is not in the best interest of the child and why;

125 (ii) Why reunification is not in the best interests of the child;

126 (iii) Whether or not the department made reasonable efforts, with the child's health and
127 safety being the paramount concern, to preserve the family, or some portion thereof, and to
128 prevent the placement or to eliminate the need for removing the child from the child's home and
129 to make it possible for the child to safely return home, or that the emergency situation made those
130 efforts unreasonable or impossible; and

(iv) Whether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof, including a description of what efforts were made or that those efforts were unreasonable due to specific circumstances.

(7) For purposes of the court's consideration of the disposition custody of a child pursuant to this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse, and sexual abuse;

(B) The parent has:

(i) Committed murder of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(ii) Committed voluntary manslaughter of the child's other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(iii) Attempted or conspired to commit murder or voluntary manslaughter, or been an accessory before or after the fact to either crime;

(iv) Committed a malicious assault that results in serious bodily injury to the child, the child's other parent, guardian, or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(v) Attempted or conspired to commit malicious assault, as outlined in subparagraph (iv), or been an accessory before or after the fact to the same;

(vi) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(vii) Attempted or conspired to commit sexual assault or sexual abuse, as outlined in subparagraph (vi), or been an accessory before or after the fact to the same.

(C) The parental rights of the parent to another child have been terminated involuntarily;

(D) A parent has been required by state or federal law to register with a sex offender registry, and the court has determined in consideration of the nature and circumstances surrounding the prior charges against that parent, that the child's interests would not be promoted by a preservation of the family.

(d) As used in this section, "No reasonable likelihood that conditions of neglect or abuse can be substantially corrected" means that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Those conditions exist in the following circumstances, which are not exclusive:

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

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

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as

181 evidenced by the continuation or insubstantial diminution of conditions which threatened the
182 health, welfare, or life of the child;

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

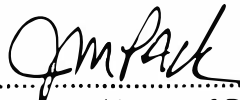
184 (5) The abusing parent or parents have repeatedly or seriously injured the child physically
185 or emotionally, or have sexually abused or sexually exploited the child, and the degree of family
186 stress and the potential for further abuse and neglect are so great as to preclude the use of
187 resources to mitigate or resolve family problems, or assist the abusing parent or parents in fulfilling
188 their responsibilities to the child; and

189 (6) The battered parent's parenting skills have been seriously impaired and the person
190 has willfully refused or is presently unwilling or unable to cooperate in the development of a
191 reasonable treatment plan, or has not adequately responded to or followed through with the
192 recommended and appropriate treatment plan.

193 (e) The court may, as an alternative disposition, allow the parents or custodians an
194 improvement period not to exceed six months. During this period the court shall require the parent
195 to rectify the conditions upon which the determination was based. The court may order the child
196 to be placed with the parents, or any person found to be a fit and proper person, for the temporary
197 care of the child during the period. At the end of the period, the court shall hold a hearing to
198 determine whether the conditions have been adequately improved and at the conclusion of the
199 hearing shall make a further dispositional order in accordance with this section.

200 (f) The court may not terminate the parental rights of a parent on the sole basis that the
201 parent is participating in a medication-assisted treatment program, as regulated in §16-5Y-1 *et*
202 *seq.*, for substance use disorder, as long as the parent is successfully fulfilling his or her treatment
203 obligations in the medication-assisted treatment program.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.


.....
Clerk of the House of Delegates

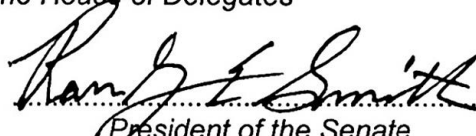

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Clerk of the Senate

FILED
200 APR - 1 P 10 52
CLERK OF HOUSE OF DELEGATES
SECRETARY OF SENATE

Originated in the House of Delegates.

In effect 90 days from passage.


.....
Speaker of the House of Delegates


.....
President of the Senate

The within is approved this the 1st
Day of April, 2026.


.....
Governor

PRESENTED TO THE GOVERNOR

MAR 25 2023

Time 3:30pm