WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2013

ENROLLED

COMMITTEE SUBSTITUTE FOR

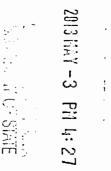
House Bill No. 2314

(By Delegates Poore, Guthrie, Wells, Lawrence, Miley and Skaff)



Passed April 9, 2013

In effect ninety days from passage.



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COMMITTEE SUBSTITUTE

for

H. B. 2314

(BY DELEGATES POORE, GUTHRIE, WELLS,

LAWRENCE, MILEY AND SKAFF)

[Passed April 9, 2013; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-6-9a, relating to authorizing a family court judge to order the emergency custody of a child in the physical custody of a party to an action or proceeding before the family court; requiring the Department of Health and Human Resources to immediately respond and assist the family court judge in emergency placement of the child; providing for circuit court order for department to file an investigative report; providing for termination of family court order; extending order of family court by filing petition; and providing additional procedures for department when a child is ordered taken into emergency custody.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §49-6-9a, to read as follows:

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

§49-6-9a. Authorizing a family court judge to order custody of a child in emergency situations.

1 (a) Notwithstanding the jurisdictional limitations contained 2 in section two, article two-A, chapter fifty-one of this code, 3 family court judges are authorized to order the department to 4 take emergency custody of a child who is in the physical custody 5 of a party to an action or proceeding before the family court, if 6 the family court judge finds that there is clear and convincing 7 evidence that:

8 (1) There exists an imminent danger to the physical 9 well-being of the child as defined in subsection (g), section 10 three, article one of this chapter;

(2) The child is not the subject of a pending action before thecircuit court alleging abuse and neglect of the child; and

13 (3) There are no reasonable available alternatives to the14 emergency custody order.

(b) An order entered pursuant to subsection (a) must includespecific written findings.

17 (c) A copy of the order issued pursuant to subsection (a)18 shall be transmitted forthwith to the department, the circuit court19 and the prosecuting attorney.

(d) Upon receipt of an order issued pursuant to subsection
(a), the department shall immediately respond and assist the
family court judge in emergency placement of the child.

(e) (1) Upon receipt of an order issued pursuant to
subsection (a), the circuit court shall forthwith cause to be
entered and served, an administrative order in the name of and
regarding the affected child, directing the department to submit,
within ninety-six hours from the time the child was taken into

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custody, an investigative report to both the circuit and familycourt.

30 (2) The investigative report shall include a statement of31 whether the department intends to file a petition under section32 three of this article.

(f) (1) An order issued pursuant to subsection (a) terminates
by operation of law upon expiration of ninety-six hours from the
time the child is initially taken into protective custody unless a
petition is filed with the circuit court under section three of this
article within ninety-six hours from the time the child is initially
taken into protective custody.

(2) The filing of a petition within ninety-six hours from the
time the child is initially taken into protective custody extends
the emergency custody order issued pursuant to subsection (a)
until a preliminary hearing is held before the circuit court, unless
the circuit court orders otherwise.

44 (g) (1) Any worker for the department assuming custody of 45 a child pursuant to the provisions of this section shall 46 immediately notify the parents, parent, grandparents. 47 grandparent, guardian or custodian of the child of the taking of 48 the custody and the reasons therefor if the whereabouts of the 49 parents, parent, grandparents, grandparent, guardian or custodian 50 are known or can be discovered with due diligence and, if not, a 51 notice and explanation shall be given to the child's closest 52 relative if his or her whereabouts are known or can be discovered 53 with due diligence within a reasonable time. An inquiry shall be 54 made of relatives and neighbors and, if an appropriate relative or 55 neighbor is willing to assume custody of the child, the child shall 56 temporarily be placed in that person's custody.

(2) In the event no other reasonable alternative is available
for temporary placement of a child pursuant to subdivision (1),
the child may be housed by the department in an authorized child
shelter facility.

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

1 Wel Chairman, House Committee Chairman, Senate Committee Originating in the House. In effect ninety days from passage. p11 4: 2. Clerk of the House of Delegates rala Clerk of the Senate ouse of Delegate Speaker of the F of the Senate this the 3rd The within _____ day of _ 2013. milie overnor

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