

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4589**

BY DELEGATES MILEY, FLUHARTY, LOVEJOY, BYRD,  
FLEISCHAUER, ROWE, R. MILLER, MARCUM, ISNER, HICKS  
AND SPONAUGLE

[Introduced February 13, 2018; Referred  
to the Committee on Prevention and Treatment of  
Substance Abuse then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §49-4-304, relating to authorizing magistrates to order emergency removal of  
3 child when parent's drug use creates unsafe environment; requiring certain information in  
4 order; providing automatic termination of order following 96 hours unless petition filed; and  
5 providing for the department to place child with relative or the department.

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

#### **ARTICLE 4. COURT ACTIONS.**

##### **§49-4-304. Emergency removal of custody by magistrates.**

1 (a) Magistrates are authorized to order the department to take emergency custody of a  
2 child who is in the physical custody of a party to an action or proceeding before the magistrate, if  
3 the magistrate finds that there is clear and convincing evidence that:

4 (1) A parent's drug use has caused an unsafe environment for the child; and

5 (2) There are no reasonable available alternatives to the emergency custody order.

6 (b) An order entered pursuant to subsection (a) of this section must include specific written  
7 findings.

8 (c) A copy of the order issued pursuant to subsection (a) of this section shall be transmitted  
9 forthwith to the department, the circuit court and the prosecuting attorney.

10 (d) Upon receipt of an order issued pursuant to subsection (a) of this section, the  
11 department shall immediately respond and assist the magistrate.

12 (e) Upon receipt of an order issued pursuant to subsection (a) of this section, the circuit  
13 court shall cause to be entered and served, an administrative order in the name of and regarding  
14 the affected child, directing the department to submit, within 96 hours from the time the child was  
15 taken into custody, an investigative report to both the circuit and family court.

16 (f) The investigative report shall include a statement of whether the department intends to  
17 file a petition pursuant to §49-4-602 of this code.

18 (g) An order issued pursuant to subsection (a) of this section terminates by operation of

19 law upon expiration of 96 hours from the time the child is initially taken into protective custody  
20 unless a petition is filed with the circuit court under §49-4-602 of this code within 96 hours from  
21 the time the child is initially taken into protective custody.

22 (h) The filing of a petition within 96 hours from the time the child is initially taken into  
23 protective custody extends the emergency custody order issued pursuant to subsection (a) of this  
24 section until a preliminary hearing is held before the circuit court, unless the circuit court orders  
25 otherwise.

26 (i) Any worker for the department assuming custody of a child pursuant to this section shall  
27 immediately notify the parents, parent, grandparents, grandparent, guardian or custodian of the  
28 child of the taking of the custody and the reasons therefor if the whereabouts of the parents,  
29 parent, grandparents, grandparent, guardian or custodian are known or can be discovered with  
30 due diligence and, if not, a notice and explanation shall be given to the child's closest relative if  
31 his or her whereabouts are known or can be discovered with due diligence within a reasonable  
32 time. An inquiry shall be made of relatives and neighbors and, if an appropriate relative or  
33 neighbor is willing to assume custody of the child, the child will temporarily be placed in that  
34 person's custody.

35 (j) In the event no other reasonable alternative is available for temporary placement of a  
36 child, the child may be housed by the department in an authorized child shelter facility.

NOTE: The purpose of this bill is to provide for magistrate to have ability to remove child from a home in which parent's use of drugs is causing an unsafe environment for the child.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.