

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2088**

BY DELEGATE ROHRBACH

[Introduced February 10, 2021; Referred to the  
Committee on Prevention and Treatment of  
Substance Abuse then the Judiciary]

1 A BILL to amend and reenact §49-4-604 of the Code of West Virginia, 1931, as amended, relating  
2 to requiring a court to verify certain conditions are met before a child who has been  
3 removed from a home may be returned to that home.

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

7 (1) A description of the type of home or institution in which the child is to be placed,  
8 including a discussion of the appropriateness of the placement and how the agency which is  
9 responsible for the child plans to assure that the child receives proper care and that services are  
10 provided to the parents, child, and foster or kinship parents in order to improve the conditions that  
11 made the child unsafe in the care of his or her parent(s), including any reasonable  
12 accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C.  
13 §12101 *et seq.*, to parents with disabilities in order to allow them meaningful access to  
14 reunification and family preservation services;

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

19 The term "permanency plan" refers to that part of the case plan which is designed to

20 achieve a permanent home for the child in the least restrictive setting available. The plan ~~must~~  
21 shall document efforts to ensure that the child is returned home within approximate timelines for  
22 reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal  
23 guardian should be made at the same time, or concurrent with, reasonable efforts to prevent  
24 removal or to make it possible for a child to return to the care of his or her parent(s) safely. If  
25 reunification is not the permanency plan for the child, the plan ~~must~~ shall state why reunification  
26 is not appropriate and detail the alternative, concurrent permanent placement plans for the child  
27 to include approximate timelines for when the placement is expected to become a permanent  
28 placement. This case plan shall serve as the family case plan for parents of abused or neglected  
29 children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian  
30 or custodian or their counsel at least five days prior to the dispositional hearing. The court shall  
31 forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be  
32 heard.

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

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

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

- 46 (1) Dismiss the petition;
- 47 (2) Refer the child, the abusing parent, the battered parent, or other family members to a  
48 community agency for needed assistance and dismiss the petition;
- 49 (3) Return the child to his or her own home under supervision of the department;
- 50 (4) Order terms of supervision calculated to assist the child and any abusing parent or  
51 battered parent or parents or custodian which prescribe the manner of supervision and care of  
52 the child and which are within the ability of any parent or parents or custodian to perform;
- 53 (5) Upon a finding that the abusing parent or battered parent or parents are presently  
54 unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the  
55 care, custody, and control of the department, a licensed private child welfare agency, or a suitable  
56 person who may be appointed guardian by the court. The court order shall state:
- 57 (A) That continuation in the home is contrary to the best interests of the child and why;
- 58 (B) Whether or not the department has made reasonable efforts, with the child's health  
59 and safety being the paramount concern, to preserve the family, or some portion thereof, and to  
60 prevent or eliminate the need for removing the child from the child's home and to make it possible  
61 for the child to safely return home;
- 62 (C) Whether the department has made reasonable accommodations in accordance with  
63 the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, to parents with disabilities  
64 in order to allow them meaningful access to reunification and family preservation services;
- 65 (D) What efforts were made or that the emergency situation made those efforts  
66 unreasonable or impossible; and
- 67 (E) The specific circumstances of the situation which made those efforts unreasonable if  
68 services were not offered by the department. The court order shall also determine under what  
69 circumstances the child's commitment to the department are to continue. Considerations pertinent  
70 to the determination include whether the child should:
- 71 (i) Be considered for legal guardianship;

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

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

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

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

91 (C) Other factors as the court considers necessary and proper. Notwithstanding any other  
92 provision of this article, the court shall give consideration to the wishes of a child 14 years of age  
93 or older or otherwise of an age of discretion as determined by the court regarding the permanent  
94 termination of parental rights. No adoption of a child shall ~~shall~~ may take place until all proceedings for  
95 termination of parental rights under this article and appeals thereof are final. In determining  
96 whether or not parental rights should be terminated, the court shall consider the efforts made by  
97 the department to provide remedial and reunification services to the parent. The court order shall

98 state:

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

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

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

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

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

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

116 (B) The parent has:

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

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

123 (iii) Attempted or conspired to commit murder or voluntary manslaughter, or been an

124 accessory before or after the fact to either crime;

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

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

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

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

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

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

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

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

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

153 (3) The abusing parent or parents have not responded to or followed through with a  
154 reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or  
155 other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as  
156 evidenced by the continuation or insubstantial diminution of conditions which threatened the  
157 health, welfare, or life of the child;

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

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

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

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

175 (f) For a parent or parents who are participating in a substance use disorder program,



176 prior to reuniting a child with his or her parent or parents, or dismissing the case, the court shall  
177 verify that the parent or parents are successfully fulfilling the treatment obligations in the program.

178 (f) (g) The court may not terminate the parental right of a parent on the sole basis that the  
179 parent is participating in a ~~medication-assisted treatment~~ substance use disorder program, as  
180 ~~regulated in §16-5Y-1 et seq. of this code, for substance use disorder,~~ as long as the parent is  
181 successfully fulfilling his or her treatment obligations in the ~~medication-assisted treatment~~  
182 program.

NOTE: The purpose of this bill is to require a court to verify that before a child who has been removed from a home may be returned to that home, that if a parent is participating in a medication-assisted treatment program he or she shall be successfully fulfilling their treatment obligations in the program.

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