

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5026

By Delegate Steele

[Introduced January 23, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-112 of the Code of West Virginia, 1931, as amended, and by
2 adding thereto a new section, designated §49-4-112a, all relating to adoption and legal
3 guardianship proceedings arising from abuse or neglect proceeding; requiring department
4 pay attorney's fees for representing adoptive parents; providing process for adoption of
5 juveniles resulting to an underlying abuse or neglect complaint; and providing effective
6 date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-112. Subsidized adoption and legal guardianship; conditions.

1 (a) From funds appropriated to the Department of Health and Human Resources, the
2 secretary shall establish a system of assistance for facilitating the adoption or legal guardianship
3 of children. An adoption subsidy shall be available for children who are legally free for adoption
4 and who are dependents of the department. A legal guardianship subsidy may not require the
5 surrender or termination of parental rights. For either subsidy, the children must be in special
6 circumstances because one or more of the following conditions inhibit their adoption or legal
7 guardianship placement:

- 8 (1) They have a physical or mental disability;
- 9 (2) They are emotionally disturbed;
- 10 (3) They are older children;
- 11 (4) They are a part of a sibling group; or
- 12 (5) They are a member of a racial or ethnic minority.

13 (b)(1) The department shall provide assistance in the form of subsidies or services to
14 parents who are found and approved for adoption or legal guardianship of a child certified as
15 eligible for subsidy by the department, but before the final decree of adoption or order of legal
16 guardianship is entered, there shall be a written agreement between the family entering into the
17 subsidized adoption or legal guardianship and the department.

18 (2) Adoption or legal guardianship subsidies in individual cases may commence with the
19 adoption or legal guardianship placement and will vary with the needs of the child as well as the
20 availability of other resources to meet the child's needs. The subsidy may be for services, money
21 payments, for a limited period, or for a long term, or for any combination of the foregoing.

22 (3) The specific financial terms of the subsidy shall be included in the agreement between
23 the department and the adoptive parents or legal guardians. The agreement ~~may shall~~ recognize
24 and must provide for the department to make direct payment of attorney's fees to the attorney
25 representing the prospective adoptive parents or legal guardians. ~~by the department of attorney's~~
26 ~~fees to an attorney representing the adoptive parent or legal guardian~~ Any such payment for
27 attorney's fees shall be made directly to the attorney representing the adoptive parent or legal
28 guardian.

29 (4) The amount of the subsidy may in no case exceed that which would be allowable for the
30 child under foster family care or, in the case of a service, the reasonable fee for the service
31 rendered.

32 (5) The department shall provide either Medicaid or other health insurance coverage for
33 any special needs child for whom there is an adoption or legal guardianship assistance
34 agreement, and who the department determines cannot be placed without medical assistance.

35 (c) The department shall certify the child as eligible for a subsidy to obtain adoption or a
36 legal guardianship if it is in the best interest of the child.

37 (d) All records regarding subsidized adoptions or legal guardianships are to be held in
38 confidence; however, records regarding the payment of public funds for subsidized adoptions or
39 legal guardianships shall be available for public inspection provided they do not directly or
40 indirectly identify any child or person receiving funds for the child.

41 (e) A payment may not be made to adoptive parents or legal guardians of child:

42 (1) Who has attained 18 years of age, unless the department determines that the child has
43 a special need which warrants the continuation of assistance or the child is continuing his or her

44 education or actively engaging in employment;

45 (2) Who has obtained 21 years of age;

46 (3) Who has not attained 18 years of age, if the department determines that the adoptive
47 parent or legal guardian is no longer supporting the child by performing actions to maintain a
48 familial bond with the child.

49 (f) Adoptive parents and legal guardians who receive subsidy payments pursuant to this
50 section shall keep the department informed of circumstances which would, pursuant to §49-4-
51 112(e) of this code, make them ineligible for the payment.

**§49-4-112a. Adoption and Legal Guardianship Proceedings Related to Abuse and Neglect
Cases.**

1 (a) Notwithstanding any other provision in this code, when an adoption or legal
2 guardianship proceeding originates as a result of an approved permanency plan in a juvenile
3 abuse and neglect proceeding under §49-4-101 et seq. of this code, the petition seeking approval
4 of the legal guardianship and adoption on behalf of the potential placement guardians or adoptive
5 parents shall be filed in the Circuit Court having jurisdiction over that juvenile abuse and neglect
6 case.

7 (b) Notwithstanding any other provision in this code, when an adoption petition or a legal
8 guardianship petition is filed pursuant to this section, the clerk of the circuit court shall assign the
9 case relating to that petition to the same circuit judge who presided over the underlying juvenile
10 abuse and neglect proceeding and assign the case a civil action number that corresponds to the
11 specific type of petition being filed.

12 (c) All adoptions not subject to the provisions of this section shall be filed and shall proceed
13 in accordance with the requirements of §48-22-101 et seq. of this code.

14 (d) For adoptions or legal guardianships filed under this section, potential adoptive parents
15 or legal guardians may elect to hire a lawyer of their choice, if they compensate the attorney
16 privately for legal services and pay the adoption case filing fee. However, if the potential adoptive

17 parents or legal guardians otherwise qualify for an adoption or legal guardianship subsidy and
18 desire to receive the subsidy for payment of attorney's fees pursuant to §49-4-112(b)(3) of this
19 code, the attorney representing the potential adoptive parents or legal guardians must be selected
20 and appointed by order of the circuit judge presiding over the underlying juvenile abuse and
21 neglect case as a condition of the potential adoptive parents or legal guardians receiving any
22 adoption or legal guardianship subsidy, pursuant to the following procedure:

23 (1) Prior to filing any adoption or legal guardianship petition, the potential adoptive parents
24 or legal guardians as determined by the circuit court's permanent placement review order, the
25 department, or any applicable adoption agency, must file a written motion requesting that the
26 circuit court appoint a lawyer to represent the potential adoptive parents or legal guardians in
27 pursuing the adoption or legal guardianship petition. Within five judicial days, the circuit court shall
28 thereafter appoint a duly licensed and qualified attorney to represent the potential adoptive
29 parents or legal guardians in pursuing the adoption or legal guardianship petition from the circuit
30 court's list of panel attorneys utilized for appointment in the following types of cases:

31 (A) Juvenile abuse and neglect;

32 (B) Juvenile delinquency;

33 (C) Juvenile status offenses;

34 (D) Juvenile guardian ad litem appointments;

35 (E) Adult criminal appointments; or

36 (F) Habeas corpus.

37 (2) Notwithstanding the requirements of subdivision (1) of this subsection, the circuit court
38 shall not appoint any current, or former, attorney of record in the underlying juvenile abuse and
39 neglect proceeding as the adoption or legal guardianship attorney; and

40 (3) Upon receipt of the appointment pursuant to this section, the adoption attorney shall
41 thereafter timely file an adoption petition in the circuit court under this section consistent with the
42 timing requirements of §48-22-701(a) of this code. An attorney that is appointed to represent

43 potential legal guardians shall timely file a legal guardianship petition as directed by the appointing
44 court; and

45 (4) The state shall compensate the appointed adoption or legal guardianship attorney
46 directly for legal services and the adoption case filing fee consistent with §49-4-112(b)(3) of this
47 code.

48 (5) An attorney that is appointed to represent potential adoptive parents or legal guardians
49 shall have access to the underlying juvenile abuse and neglect case files relevant to the children
50 subject to the adoption or legal guardianship. The court's order appointing the attorney, for the
51 purposes outlined in this subdivision, shall have language that specifically grant the appointed
52 attorney access to the underlying juvenile abuse or neglect proceedings.

53 (e) If any child adopted or placed in a legal guardianship under this section is subsequently
54 removed by the department from the adoptive or guardianship home or if there is a subsequent
55 relinquishment by any adoptive parent, the circuit court that handled the adoption or legal
56 guardianship pursuant to this section shall be considered the court of proper jurisdiction for
57 purposes of any future modification of placement pursuant to §49-4-606(b) of this code, or
58 pursuant to the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings;
59 Provided, That this provision only applies to relinquishments that:

60 (1) Are not the result of a subsequent abuse and neglect petition that is filed against the
61 adoptive parents or legal guardians in the circuit court of proper jurisdiction pursuant to §49-4-606
62 of this code, or filed in another county, which shall be controlled by subsection (f) of this section;
63 and

64 (2) Have been brought before the circuit court of proper jurisdiction pursuant to §49-4-606
65 of this code through a motion filed by the adoptive parent or legal guardians requesting permission
66 to relinquish their parental or guardianship rights and modify placement for the child based upon
67 the relinquishment or a petition from the department or third-party seeking appointment of a
68 guardian in place of the adoptive parents or legal guardians.

69 (f) If an adoptive parent relinquishes their parental rights pursuant to this section, such
70 relinquishment shall be controlled by §49-4-607 of this code and Rule 35 of the West Virginia
71 Rules of Procedure for Child Abuse and Neglect Proceedings and the circuit court shall have
72 discretion to order the relinquishment of all parental rights of the adoptive parent.

73 (g) If a legal guardian relinquishes their guardianship rights pursuant to this section, the
74 court shall make the following inquiry at a hearing held pursuant to §49-4-606 of this code:

75 (1) If the guardian is present in court and voluntarily has signed a duly acknowledged
76 relinquishment of guardianship rights, the court shall determine whether the parent fully
77 understands the consequences of a relinquishment of guardianship rights, is aware of possible
78 less drastic alternatives than relinquishment, was informed of the right to a hearing and to
79 representation by counsel, and was the signed relinquishment entered into under circumstances
80 free from duress, coercion, and fraud;

81 (2) If the guardian is not present in court but has signed a relinquishment of guardianship
82 rights, the court shall determine whether the guardian was thoroughly advised of and understood
83 the consequences of a relinquishment of guardianship rights, is aware of possible less drastic
84 alternatives than relinquishment, was informed of the right to a hearing and to representation by
85 counsel, and was the signed relinquishment entered into under circumstances free from duress,
86 coercion, and fraud.

87 (h) The circuit court of proper jurisdiction, pursuant to §49-4-606 of this code, also retains
88 jurisdiction to modify placement following the death of the last remaining adoptive parent or
89 guardian if the child subject to the adoption or legal guardianship is still a minor at that time of
90 death.

91 (i) If a petition under §49-4-601 et seq. of this code is filed against the adoptive parents or
92 guardians based upon allegations of abuse or neglect, the circuit court in the county where the
93 abuse and neglect occurred shall have jurisdiction over that petition and shall preside over all
94 proceedings. The adoptive parents and legal guardians shall be entitled to all legal rights, due

95 process protections, and procedures required by §49-4-601 et seq. of this code before any court
96 could modify the child's permanent placement: *Provided*, That once a juvenile abuse or neglect
97 case is subject to a permanent placement review conference, the circuit court in which the
98 proceeding is pending and any other circuit court with powers enumerated in §49-4-606 of this
99 code, if different, shall confer to determine whether the proceeding should be transferred to the
100 circuit court with powers enumerated in §49-4-606 of this code: *Provided, however*, That any
101 determination that a circuit court is an inconvenient forum under the circumstances and that
102 another circuit court is the more appropriate forum to make further permanency decisions under
103 §49-4-606 of this code shall be based upon the requirements of §48-20-207 of this code. After
104 any conference of circuit courts required in this subsection, the circuit court of jurisdiction shall
105 retain exclusive jurisdiction for purposes of any further modifications of disposition or changes in
106 permanency, including any future adoption petitions which may relate to the same children, unless
107 directed otherwise by rules promulgated by the Supreme Court of Appeals of West Virginia.

108 (j) The Supreme Court of Appeals of West Virginia may amend current rules and
109 promulgate new rules related to appointment of attorneys to represent potential adoptive parents
110 or legal guardians under this section, including, but not limited to, adoption case jurisdiction; legal
111 guardianship jurisdiction, adoptive parents, legal guardians, the department and adoption
112 agencies providing written notice to the circuit court regarding an adoption attorney appointment
113 under this section; and adoption or legal guardianship attorney qualifications including, but not
114 limited to, education, training and experience requirements along with any minimum number of
115 other court-appointed cases an attorney must accept to be eligible to receive adoption or legal
116 guardianship appointments.

117 (k) The effective date for the provisions hereof shall be January 1, 2025, and the changes
118 related to adoption and legal guardianship jurisdiction and process shall only apply to new abuse
119 and neglect cases where the initial petition has been filed after this effective date.

NOTE: The purpose of this bill is to relates to adoption and legal guardianship proceedings arising from abuse or neglect proceeding; requiring department pay attorney's fees for representing adoptive parents; providing process for adoption of juveniles resulting to an underlying abuse or neglect complaint; and providing effective date.

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