

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 5065

By Delegates Steele, Hanshaw (Mr. Speaker), Criss,
Kelly, Rohrbach, Summers, Kirby, Nestor, Sheedy,
Cannon, and Maynor

[Originating in the Committee on the Judiciary;

Reported on February 1, 2024]

1 A BILL to amend and reenact §29-21-13a of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §44-10-14 of said code; and to amend and reenact §49-4-601 of said
3 code; relating to compensation of a guardian ad litem in cases involving the West Virginia
4 Public Defender Services; relating to requirements and rates of compensation for a
5 guardian ad litem in a minor settlement proceeding; and relating to continuing education
6 requirements of Guardians Ad Litem.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-13a. Compensation and expenses for panel attorneys.

1 (a) All panel attorneys shall maintain detailed and accurate records of the time expended
2 and expenses incurred on behalf of eligible clients, and which records are to be maintained in a
3 form that will enable the attorney to determine for any day the periods of time expended in tenths of
4 an hour on behalf of any eligible client and the total time expended in tenths of an hour on that day
5 on behalf of all eligible clients: *Provided*, That in no event may panel attorneys be required to
6 maintain or submit the actual start and finish times of work performed.

7 (b) Upon completion of each case, exclusive of appeal, panel attorneys shall submit to
8 Public Defender Services a voucher for services. Public Defender Services shall electronically
9 acknowledge the submission of a voucher. Claims for fees and expense reimbursements shall be
10 submitted to Public Defender Services on forms approved by the executive director. The executive
11 director shall establish guidelines for the submission of vouchers and claims for fees and expense
12 reimbursements under this section. Claims submitted more than 90 business days after the last
13 date of service shall be rejected unless, for good cause, the appointing court authorizes in writing
14 an extension.

15 (c) Public Defender Services shall review the voucher to determine if the time and expense
16 claims are reasonable, necessary, and valid. A voucher found to be correct shall be processed and
17 payment promptly directed within 45 business days of submission of the voucher.

18 (d)(1) If Public Defender Services rejects a voucher, the attorney submitting the voucher
19 shall be notified electronically of the rejection and provided detailed reasons for the rejection within
20 30 business days of submission of the voucher. The attorney may resubmit the voucher
21 accompanied by copies of his or her records supporting the voucher and certification from the
22 appointing court that the services or expenses were performed or incurred, and were reasonable
23 and necessary, within 15 business days of receipt of notification. The executive director shall make
24 a final agency decision regarding the rejection of the voucher within 15 business days of receipt of
25 the submitted records and certification. Under no circumstances may the executive director have
26 the authority or require any panel attorney to submit privileged client information. (2) If the final
27 agency decision is to reject the voucher, Public Defender Services shall request review of the final
28 agency decision by motion to the appointing court filed within 15 business days of notice of the
29 final agency decision. After a hearing providing the attorney and Public Defender Services an
30 opportunity to be heard, the appointing court shall have final authority to resolve the issue of
31 payment and to order all remedies available under the West Virginia Rules of Civil Procedure.

32 (e) If Public Defender Services reduces the amount of compensation claimed or
33 reimbursement requested, the attorney submitting the voucher shall be notified electronically of
34 the reduction and detailed reasons for the reduction within 30 business days of the submission of
35 the voucher. The attorney may:

36 (1) Agree with the reduction and certify his or her agreement electronically to Public
37 Defender Services which shall then proceed to process payment; or

38 (2) Disagree with the reduction and request payment of the reduced amount while
39 preserving the ability to contest the reduction;

40 (3) An attorney proceeding pursuant to this subsection shall inform Public Defender
41 Services of his or her decision by electronic means within 15 business days of receipt of the notice
42 of reduction. If there is no communication from the attorney within 15 business days of receipt of
43 the notice of reduction, then the reduction is deemed to be accepted by the attorney;

44 (4) The attorney may submit records and certification from the appointing court that the
45 services or expenses reflected in the amount reduced were performed or incurred and were
46 reasonable and necessary. The executive director shall then make a final agency decision
47 regarding the reduction within 15 business days of receipt of the submitted records and
48 certification. Under no circumstances may the executive director have the authority to require any
49 panel attorney to submit privileged client information;

50 (5) If the attorney disagrees with the final agency decision, and the attorney and the
51 executive director cannot reach an agreement regarding the reduction within 15 business days of
52 the receipt of the notice of the final agency decision, Public Defender Services shall request review
53 of the final agency decision by motion to the appointing court filed within 15 business days of
54 notice of the final agency decision. After a hearing providing the attorney and Public Defender
55 Services an opportunity to be heard, the appointing court shall have final authority to resolve the
56 issue of payment, and to order all remedies available under the West Virginia Rules of Civil
57 Procedure;

58 (6) If there is no communication from Public Defender Services within 30 business days of
59 the submission of the voucher, the voucher is deemed to have been approved for payment without
60 reduction.

61 (f) Notwithstanding any provisions of this code to the contrary, the executive director may
62 employ in-house counsel to represent Public Defender Services in hearings held pursuant to this
63 article.

64 (g) Except for the emergency rule-making provision set forth in §29-21-6~~(h)~~ (i) of this code,
65 the provisions of the amendments to this article enacted during the 2019 regular session of the
66 Legislature shall be effective July 1, 2019.

67 (h) Notwithstanding any other provision of this section to the contrary, Public Defender
68 Services may pay by direct bill, prior to the completion of the case, litigation expenses incurred by
69 attorneys appointed under this article.

70 (i) Notwithstanding any other provision of this section to the contrary, a panel attorney may
71 be compensated for services rendered and reimbursed for expenses incurred prior to the
72 completion of the case where: (1) More than six months have expired since the commencement of
73 the panel attorney's representation in the case; and (2) no prior payment of attorney fees has been
74 made to the panel attorney by Public Defender Services during the case. The executive director, in
75 his or her discretion, may authorize periodic payments where ongoing representation extends
76 beyond six months in duration. The amounts of any fees or expenses paid to the panel attorney on
77 an interim basis, when combined with any amounts paid to the panel attorney at the conclusion of
78 the case, shall not exceed the limitations on fees and expenses imposed by this section.

79 (j) In each case in which a panel attorney provides legal representation under this article,
80 and in each appeal after conviction in circuit court, the panel attorney shall be compensated at the
81 following rates for actual and necessary time expended for services performed and expenses
82 incurred subsequent to the effective date of this article:

83 (1) For attorney's work performed out of court, compensation shall be at the rate of \$60 per
84 hour: Provided, That a panel attorney who serves as legal counsel or guardian ad litem for a minor
85 child in a child abuse or neglect proceeding shall be compensated for work performed out of court
86 on or after July 1, 2024, at the rate of \$105 per hour.

87 Out-of-court work includes, but is not limited to, travel, interviews of clients or witnesses,
88 preparation of pleadings, and prehearing or pretrial research;

89 (2) For attorney's work performed in court, compensation shall be at the rate of \$80 per
90 hour: Provided, That a panel attorney who serves as legal counsel or guardian ad litem for a minor
91 child in a child abuse or neglect proceeding shall be compensated for work performed in court on
92 or after July 1, 2024, at the rate of \$125 per hour.

93 In-court work includes, but is not limited to, multidisciplinary team meetings convened
94 pursuant to §49-4-405 of this code and, all time spent awaiting hearing or trial before a judge,
95 magistrate, special master, or other judicial officer;

96 (3) Compensation for legal services performed for a panel attorney by a paralegal out-of-
97 court is to be calculated using a rate of \$20 per hour and no such compensation is to be paid for in-
98 court services performed for a panel attorney by a paralegal absent prior approval of the circuit
99 court before whom the panel attorney is appearing and subject to maximum reimbursement
100 amounts set by agency rule;

101 (4) The maximum amount of compensation for out-of-court and in-court work under this
102 subsection is as follows: For proceedings of any kind involving felonies for which a penalty of life
103 imprisonment may be imposed, the amount as the court may approve; for all other eligible
104 proceedings, \$4,500 unless the court, for good cause shown, approves payment of a larger sum.

105 (k) Actual and necessary expenses incurred in providing legal representation for
106 proceedings of any kind involving felonies for which a penalty of life imprisonment may be
107 imposed, including, but not limited to, expenses for travel, transcripts, salaried or contracted
108 investigative services, and expert witnesses, shall be reimbursed in an amount as the court may
109 approve. For all other eligible proceedings, actual and necessary expenses incurred in providing
110 legal representation, including, but not limited to, expenses for travel, transcripts, salaried or
111 contracted investigative services and expert witnesses, shall be reimbursed to a maximum of
112 \$2,500 unless the court, for good cause shown, approves reimbursement of a larger sum.

113 (l) Expense vouchers shall specifically set forth the nature, amount, and purpose of
114 expenses incurred and shall provide receipts, invoices, or other documentation required by the
115 executive director and the State Auditor as follows:

116 (1) Reimbursement of expenses for production of transcripts of proceedings reported by a
117 court reporter is limited to the cost per original page and per copy page as set forth in §51-7-4 of
118 this code;

119 (2) There may be no reimbursement of expenses for or production of a transcript of a
120 preliminary hearing before a magistrate or juvenile referee, or of a magistrate court trial, where the
121 hearing or trial has also been recorded electronically in accordance with the provisions of §50-5-8
122 of this code or court rule;

123 (3) Reimbursement of the expense of an appearance fee for a court reporter who reports a
124 proceeding other than one described in subdivision (2) of this subsection is limited to \$25. Where a
125 transcript of a proceeding is produced, there may be no reimbursement for the expense of any
126 appearance fee;

127 (4) Except for the appearance fees provided in this subsection, there may be no
128 reimbursement for hourly court reporters' fees or fees for other time expended by the court
129 reporter, either at the proceeding or traveling to or from the proceeding;

130 (5) Reimbursement of the cost of transcription of tapes electronically recorded during
131 preliminary hearings or magistrate court trials is limited to \$1 per page;

132 (6) Reimbursement for any travel expense incurred in an eligible proceeding is limited to
133 the rates for the reimbursement of travel expenses established by rules promulgated by the
134 Governor pursuant to the provisions of ~~§12-8-11~~ §12-3-11 of this code and administered by the
135 Secretary of the Department of Administration pursuant to the provisions of §5A-3-48 of this code;

136 (7) Reimbursement for investigative services is limited to a rate of \$30 per hour for work
137 performed by an investigator.

138 (m) For purposes of compensation under this section, an appeal from magistrate court to
139 circuit court, an appeal from a final order of the circuit court, or a proceeding seeking an
140 extraordinary remedy made to the Supreme Court of Appeals shall be considered a separate
141 case.

142 (n) Vouchers submitted under this section shall specifically set forth the nature of the
143 service rendered, the stage of proceeding or type of hearing involved, the date and place the
144 service was rendered, and the amount of time expended in each instance. All time claimed on the
145 vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible client
146 for which services were rendered is one of several charges involving multiple warrants or
147 indictments, the voucher shall indicate the fact and sufficiently identify the several charges so as to
148 enable Public Defender Services to avoid a duplication of compensation for services rendered.
149 The executive director shall refuse to requisition payment for any voucher which is not in
150 conformity with the recordkeeping, compensation, or other provisions of this article or the voucher
151 guidelines established issued pursuant to this article and in such circumstance shall return the
152 voucher to the court or to the service provider for further review or correction.

153 (o) Vouchers submitted under this section shall be reimbursed within 90 days of receipt.
154 Reimbursements after 90 days shall bear interest from the 91st day at the legal rate in effect for the
155 calendar year in which payment is due.

156 (p) Vouchers submitted for fees and expenses involving child abuse and neglect cases
157 shall be processed for payment before processing vouchers submitted for all other cases.

158 (q) Upon a dismissal of or a finding of not guilty concerning a criminal charge, should the
159 charge or charges for which the indigent defendant was afforded counsel qualify for an
160 expungement of charges under §61-11-25 of this code, the defendant shall be afforded continued
161 representation upon the terms specified in this section. The Panel Attorney shall include the
162 services performed by panel attorneys in regard to an expungement on the same voucher or a
163 subsequent voucher submitted concerning the same case number as the one submitted to Public

164 Defender Services for the underlying criminal charge or charges. The maximum amount of
165 compensation for out-of-court and in-court work under this section shall be limited to \$1,000 for
166 expungement services in addition to the limits imposed on the underlying criminal charge or
167 charges, unless the court, for good cause shown, approves payment of a larger sum. The actual
168 and necessary expenses incurred in providing legal representation for expungement proceedings
169 under this section shall be reimbursed to a maximum of \$500 unless the court, for good cause
170 shown, approves reimbursement of a larger sum.

171 (r) Beginning on July 1, 2024, Public Defender Services shall annually provide to the
172 Legislative Oversight Commission on Health and Human Resources, the Foster Care
173 Ombudsman, and the West Virginia Supreme Court of Appeals a report summarizing legal
174 services that are being provided by the submission of a voucher by panel attorneys serving as
175 guardians ad litem in the courts the state. Each agency report will contain a summary of the
176 following legal services being provided by panel attorneys serving as guardians ad litem:

177 (1) The average per case number of multidisciplinary team meetings attended by
178 appointed guardians ad litem from the initial appointment date until permanency for the child has
179 been achieved as reflected by court order;

180 (2) The average amount of cases an appointed panel attorney served as a guardian ad
181 litem;

182 (3) The average length of time that a child abuse or neglect proceeding lasts from the date
183 of the initial appointment of a panel guardian ad litem until an order is entered that finds that
184 permanency for the child has been achieved;

185 (4) The average number of in-person visits or conferences that appointed guardians ad
186 litem have with their clients, or when appropriate the client's parents or caretaker, including the
187 aggregate number of cases that appointed guardians ad litem have an in-person visit, or
188 conference, with their client, or when appropriate a client's parents or caretaker, and the aggregate
189 number of cases that guardians ad litem did not have an in-person visit or conference with their

190 client, or client's parents or caretaker: *Provided*, That nothing in this subsection will require the
191 disclosure by any guardian ad litem of any information protected by attorney client privilege.

192 (5) The average number of out-of-court hours itemized and billed in each case by an
193 appointed panel attorney serving as guardian ad litem from the initial appointment date until
194 permanency for the child has been achieved as reflected by court order;

195 (6) The average number of in-court hours itemized and billed in each case by an appointed
196 panel attorney serving as guardian ad litem from the initial appointment date until permanency for
197 the child has been achieved as reflected by court order;

198 (7) The average number of hours itemized and billed in each case as travel time by an
199 appointed panel attorney serving as guardian ad litem from the initial appointment date until
200 permanency for the child has been achieved as reflected by court order.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-14. Minor settlement proceedings.

1 This section shall be known as the "Minor Settlement Proceedings Reform Act".

2 (a) If a minor suffers injury to his or her person or property, the parent, guardian or next
3 friend of the minor may negotiate a settlement of the minor's claim for damages prior to or
4 subsequent to the filing of an action for damages.

5 (b) *Filing of petition or motion.* — In order to secure a release of the party or parties
6 allegedly responsible for the injury or loss, the parent, next friend or guardian of the minor shall file
7 a verified petition in the circuit court of the county in which the minor resides or in which an action
8 for damages may be filed in accordance with the provisions of ~~section one, article one, chapter~~
9 ~~fifty-six~~ §56-1-1 et seq. of this code: *Provided*, That if an action for damages of the minor is
10 pending in circuit court, the petition shall be filed, verified and served as a motion in the pending
11 action and may be filed by a parent, guardian or next friend.

12 (c) *Contents of petition or motion.* — The petition or motion shall request approval by the
13 court of the terms of the proposed settlement, the release of liability and the manner of distribution
14 of settlement proceeds. The petition or motion shall also state the following:

15 (1) The name, gender and age of the minor;

16 (2) The facts of the injury and damages of the minor relied upon in requesting the court to
17 consider and approve the proposed settlement and release;

18 (3) The circumstances and events leading to the injury or loss at issue and the identities of
19 the persons or entities alleged to be responsible for the injury or loss;

20 (4) The identities of the persons or entities to be released;

21 (5) The circumstances of the minor at the time of the petition or motion;

22 (6) The relationship of the petitioner or moving party to the minor;

23 (7) The nature and effect of the injury;

24 (8) The sum of expenses expended for the treatment and care of the minor for the injuries
25 at issue;

26 (9) An estimate of future expenses for the treatment and care of the minor related to the
27 injury and how such expenses would be satisfied from the settlement proceeds;

28 (10) A proposal as to how the costs and expenses of processing the settlement and
29 release are to be satisfied;

30 (11) A proposal for distribution of other settlement proceeds; and

31 (12) A request for such other relief as the court may determine is appropriate in the best
32 interests of the child.

33 (d) *Guardian ad litem.* — Upon the filing of a petition or motion, the court shall appoint an
34 attorney to serve as a guardian ad litem to :Provided, That the attorney appointed pursuant to this
35 subsection has completed the same continuing education requirements provided in §49-4-601 of
36 this code for child and neglect proceedings.

37 (e) An appointed guardian ad litem shall:

38 (1) Review and confirm the facts set forth in the petition and the facts and circumstances of
39 the minor, including the injuries and losses of the minor alleged to have been caused by the party
40 or parties to be released as alleged in the petition or motion; the treatment and conditions past,
41 present and in the foreseeable future of the minor as a result of the injuries and losses at issue; the
42 proposed amounts and procedures for distribution of settlement proceeds; and other relevant
43 information appearing in the petition or motion or otherwise; and

44 (2) File an answer to the petition or motion on behalf of the minor, stating the opinion of the
45 guardian ad litem as to whether or not the proposed settlement and release and the proposed
46 distribution of proceeds are in the best interest of the minor.

47 ~~(e)~~ (f) *Hearing.* — A hearing shall be conducted on the petition or motion, at which time the
48 court shall take testimony and consider arguments regarding the alleged injuries or losses and the
49 proposals for the settlement, release, initial payment of expenses and the distribution of
50 settlement proceeds: *Provided*, That the court may order that the minor appear and testify if the
51 court finds that his or her appearance or testimony is appropriate for consideration by the court of
52 the proposed settlement.

53 ~~(f)~~ (g) *Release form.* — If the court grants the requested relief, a release of the claim of the
54 minor against the persons or entities alleged to be responsible for the injuries or losses and who
55 are identified in the petition or motion to be released from liability, any other persons or entities
56 making payment on behalf of those persons or entities and any subsidiaries or successor persons
57 or entities shall be executed by a party authorized by the court to execute the release. The release
58 shall be in form or effect as follows:

59 I,, the [guardian or other person authorized to execute the release] of, a
60 minor, in consideration of the sum of \$....., and under authority of an order of the circuit court of
61 County, entered on the day of, 20....., pursuant to West Virginia Code 44-10-
62 14, do hereby release from all claims and demands on account of injuries allegedly inflicted

63 upon the minor and any property of the minor on the day of,, at
64

65 _____

66 (Signature)

67 [Guardian or other person authorized by the court to execute the release] of

68 ~~(g)~~ (h) *Order approving or rejecting settlement.* — The court shall enter an order with
69 findings of fact and granting or rejecting the proposed settlement, release and distribution of
70 settlement proceeds. If the requested relief is granted, the court shall provide by order that an
71 attorney appearing in the proceeding or other responsible person shall negotiate, satisfy and pay
72 initial expense payments from settlement proceeds, the costs and fees incurred for the settlement
73 and any bond required therefor, expenses for treatment of the minor related to the injury at issue,
74 payments to satisfy any liens on settlement proceeds, if any, and such other directives as the court
75 finds appropriate to complete the settlement and secure the proceeds for the minor.

76 (1) In allowing the payment of settlement proceeds for attorney fees, legal expenses, court
77 costs and other costs of securing the settlement in such reasonable amounts as the court finds in
78 its discretion to be appropriate, the court shall consider the amount to be paid as damages, the
79 age and necessities of the minor, the nature of the injury, the difficulties involved in effecting the
80 settlement, legal expenses and fees paid to attorneys in similar cases and any other matters which
81 the court determines should be considered in achieving a proper and equitable distribution of
82 settlement proceeds.

83 (2) In allowing any sums to be paid to the minor or to another person to be used for the
84 immediate personal benefit of the minor, the court shall state further the terms under which such
85 payments shall be made, including the use for which such sums may be expended and the times
86 on which such payments shall be made: *Provided*, That such payments shall be made no later
87 than twenty-four months after entry of the order.

88 (3) The order shall provide that settlement proceeds remaining after the initial payment of
89 expenses shall be deemed net settlement trust proceeds.

90 (4) If the net settlement proceeds are less than \$25,000, the court may order that the
91 person authorized to pay the initial expenses deposit net settlement trust proceeds into a
92 regulated financial institution or institutions with a principal place of business in this state, in
93 interest bearing certificates of deposit or accounts or securities that are fully insured by federal
94 deposit insurance, in the name of the minor and payable by the financial institution only to the
95 minor upon presentation of proper identification after the minor attains the age of majority:
96 *Provided*, That such person may be authorized by the court to transfer funds to a substitute
97 qualified institution or institutions from the financial institution or institutions initially selected:
98 *Provided, however*, That any substitution shall be reported to any fiduciary commissioner or
99 supervisor of the county that the court has designated to review ~~of~~ the status of the investment and
100 security of net settlement trust proceeds: *Provided further*, That whenever net settlement trust
101 proceeds are deposited into a bank pursuant to the provisions of this paragraph, such bank shall,
102 within ten days of receipt of such funds, file with the clerk of the court an acknowledgment that the
103 funds have been received and that such funds may be withdrawn only by the minor upon his or her
104 reaching the age of majority or upon order of the court.

105 (5) The order shall provide that within sixty days of the entry of the order, a statement of
106 initial expense payments and an inventory of net settlement trust proceeds and any income
107 earned thereon shall be filed by the person authorized to pay initial expenses with the fiduciary
108 commissioner or supervisor of the county commission designated by the court to review the status
109 of settlement proceeds for the minor.

110 (6) The order shall direct that a certified copy of the order of the court approving the
111 settlement be provided by the clerk of the circuit court to the fiduciary commissioner or supervisor
112 designated by the court to review the status of settlement proceeds.

113 (7) The order shall provide that the appointed guardian ad litem be reimbursed for any
114 actual and necessary expenses incurred in performance of their duties pursuant to this article and
115 compensated for legal services at a rate of \$200 per hour.

116 (h) (i) Appointment of conservator and reports to fiduciary officers. — The court may
117 appoint a conservator to serve as the person responsible for investment and control of net
118 settlement trust proceeds until the minor attains the age of majority or at such later time as the
119 court may order upon terms the court finds to be in the best interest of the minor, taking into
120 consideration any special needs of the minor at any age. The conservator may be a guardian
121 appointed pursuant to ~~section three of this article~~ §44-10-3 of this code or other responsible
122 person.

123 (1) Neither the corpus nor income accumulated on net settlement trust proceeds shall be
124 used for the maintenance or care of the minor during his or her minority, absent unusual
125 circumstances or special needs of the minor specified in the order approving the settlement. The
126 corpus or income earned thereon may not be invaded, revised or subjected to assignment, levy,
127 garnishment or other order, except as shall be first approved by order of the court approving the
128 settlement.

129 (2) The court shall determine the amount and necessity for bond of the conservator and for
130 any surety of the bond of the conservator, payable on behalf of the minor in an amount sufficient to
131 protect the principal of net settlement trust proceeds, unless the court finds the conservator is
132 already under bond and surety of bond sufficient for the purpose. The bond of the conservator and
133 surety for the bond of the conservator shall be in form and type acceptable to the fiduciary
134 commissioner or supervisor of the county commission designated by the court to review the
135 reports of the conservator and shall be conditioned to account for and pay over the amount of net
136 settlement trust proceeds as provided for by the order of the court. The clerk of the circuit court
137 shall provide to the office of such fiduciary commissioner or supervisor a certified copy of the
138 court's order approving the settlement and distribution of proceeds and such fiduciary

139 commissioner or supervisor shall file and record the order with any bond of the conservator that
140 may be required by the court approving the settlement and distribution of proceeds.

141 (3) A report of net settlement trust proceeds and income earned thereon for each calendar
142 year shall be filed by the conservator by February 1 next following the end of the calendar year in
143 which the order approving the settlement is entered and every year thereafter in accordance with
144 the terms of the court order.

145 (4) If the amount of net settlement trust proceeds is less than \$25,000, the court may
146 include in the order approving the settlement a waiver of any or all of the requirements regarding
147 reference to a fiduciary officer, the filing of the order or of any other reports or statements of
148 accounts with a fiduciary commissioner or supervisor of the county commission designated by the
149 court, the posting of bond and corporate or other surety of bond of the conservator and any listing
150 and publication of accounts.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

Part VI. Procedures in Cases of Child Neglect or Abuse

§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to counsel; continuing legal education; findings; proceedings; procedure.

1 (a) Petitioner and venue. — If the department or a reputable person believes that a child is
2 neglected or abused, the department or the person may present a petition setting forth the facts to
3 the circuit court in the county in which the child resides, or if the petition is being brought by the
4 department, in the county in which the custodial respondent or other named party abuser resides,
5 or in which the abuse or neglect occurred, or to the judge of the court in vacation. Under no
6 circumstance may a party file a petition in more than one county based on the same set of facts.

7 (b) *Contents of Petition.* — The petition shall be verified by the oath of some credible
8 person having knowledge of the facts. The petition shall allege specific conduct including time and

9 place, how the conduct comes within the statutory definition of neglect or abuse with references
10 thereto, any supportive services provided by the department to remedy the alleged circumstances
11 and the relief sought.

12 (c) *Court action upon filing of petition.* — Upon filing of the petition, the court shall set a time
13 and place for a hearing and shall appoint counsel for the child. When there is an order for
14 temporary custody pursuant to this article, the preliminary hearing shall be held within ten days of
15 the order continuing or transferring custody, unless a continuance for a reasonable time is granted
16 to a date certain, for good cause shown.

17 (d) *Department action upon filing of the petition.* — At the time of the institution of any
18 proceeding under this article, the department shall provide supportive services in an effort to
19 remedy circumstances detrimental to a child.

20 (e) *Notice of hearing.* —

21 (1) The petition and notice of the hearing shall be served upon both parents and any other
22 custodian, giving to the parents or custodian at least five days' actual notice of a preliminary
23 hearing and at least ten days' notice of any other hearing.

24 (2) Notice shall be given to the department, any foster or preadoptive parent, and any
25 relative providing care for the child.

26 (3) In cases where personal service within West Virginia cannot be obtained after due
27 diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall
28 be mailed to the person by certified mail, addressee only, return receipt requested, to the last
29 known address of the person. If the person signs the certificate, service shall be complete and the
30 certificate shall be filed as proof of the service with the clerk of the circuit court.

31 (4) If service cannot be obtained by personal service or by certified mail, notice shall be by
32 publication as a Class II legal advertisement in compliance with ~~article three, chapter fifty-nine~~
33 §59-3-1 et seq. of this code.

34 (5) A notice of hearing shall specify the time and place of the hearing, the right to counsel of
35 the child and parents or other custodians at every stage of the proceedings and the fact that the
36 proceedings can result in the permanent termination of the parental rights.

37 (6) Failure to object to defects in the petition and notice may not be construed as a waiver.

38 (f) *Right to counsel.* —

39 (1) In any proceeding under this article, the child, his or her parents and his or her legally
40 established custodian or other persons standing in *loco parentis* to him or her has the right to be
41 represented by counsel at every stage of the proceedings and shall be informed by the court of
42 their right to be so represented and that if they cannot pay for the services of counsel, that counsel
43 will be appointed.

44 (2) Counsel shall be appointed in the initial order. For parents, legal guardians, and other
45 persons standing in *loco parentis*, the representation may only continue after the first appearance
46 if the parent or other persons standing in *loco parentis* cannot pay for the services of counsel.

47 (3) Counsel for other parties shall only be appointed upon request for appointment of
48 counsel. If the requesting parties have not retained counsel and cannot pay for the services of
49 counsel, the court shall, by order entered of record, appoint an attorney or attorneys to represent
50 the other party or parties and so inform the parties.

51 (4) Under no circumstances may the same attorney represent both the child and the other
52 party or parties, nor may the same attorney represent both parents or custodians. However, one
53 attorney may represent both parents or custodians where both parents or guardians consent to
54 this representation after the attorney fully discloses to the client the possible conflict and where the
55 attorney assures the court that she or he is able to represent each client without impairing her or
56 his professional judgment; however, if more than one child from a family is involved in the
57 proceeding, one attorney may represent all the children.

58 (5) A parent who is a copetitioner is entitled to his or her own attorney. The court may allow
59 to each attorney so appointed a fee in the same amount which appointed counsel can receive in
60 felony cases.

61 (g) *Continuing education for counsel.* — ~~Any attorney representing a party under this~~
62 ~~article shall receive a minimum of eight hours of continuing legal education training per reporting~~
63 ~~period on child abuse and neglect procedure and practice. In addition to this requirement, any Any~~
64 attorney representing a party under this article shall receive a minimum of eight hours of
65 continuing legal education training per reporting period on child abuse and neglect procedure and
66 practice. Any attorney appointed to represent a child or serve as a guardian ad litem must first
67 complete training on representation of children that is approved by the administrative office of the
68 Supreme Court of Appeals. The Supreme Court of Appeals shall develop procedures for approval
69 and certification of training required under this section. ~~Where no attorney has completed the~~
70 ~~training required by this subsection, the court shall appoint a competent attorney with~~
71 ~~demonstrated knowledge of child welfare law to represent the parent or child.~~ Any attorney
72 appointed pursuant to this section shall perform all duties required of an attorney licensed to
73 practice law in the State of West Virginia.

74 (h) *Right to be heard.* — In any proceeding pursuant to this article, the party or parties
75 having custodial or other parental rights or responsibilities to the child shall be afforded a
76 meaningful opportunity to be heard, including the opportunity to testify and to present and cross-
77 examine witnesses. Foster parents, preadoptive parents, and relative caregivers shall also have a
78 meaningful opportunity to be heard.

79 (i) *Findings of the court.* — Where relevant, the court shall consider the efforts of the
80 department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing,
81 the court shall make a determination based upon the evidence and shall make findings of fact and
82 conclusions of law as to whether the child is abused or neglected and whether the respondent is
83 abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the

84 order of the court. The findings must be based upon conditions existing at the time of the filing of
85 the petition and proven by clear and convincing evidence.

86 (j) *Priority of proceedings.* — Any petition filed and any proceeding held under this article
87 shall, to the extent practicable, be given priority over any other civil action before the court, except
88 proceedings under ~~section three hundred nine, article twenty-seven, chapter forty-eight~~ §48-27-
89 309 of this code and actions in which trial is in progress. Any petition filed under this article shall be
90 docketed immediately upon filing. Any hearing to be held at the end of an improvement period and
91 any other hearing to be held during any proceedings under this article shall be held as nearly as
92 practicable on successive days and, with respect to the hearing to be held at the end of an
93 improvement period, shall be held as close in time as possible after the end of the improvement
94 period and shall be held within thirty days of the termination of the improvement period.

95 (k) *Procedural safeguards.* — The petition may not be taken as confessed. A transcript or
96 recording shall be made of all proceedings unless waived by all parties to the proceeding. The
97 rules of evidence shall apply. Following the court's determination, it shall be inquired of the parents
98 or custodians whether or not appeal is desired and the response transcribed. A negative response
99 may not be construed as a waiver. The evidence shall be transcribed and made available to the
100 parties or their counsel as soon as practicable, if the same is required for purposes of further
101 proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall
102 furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating
103 that he or she cannot pay therefor.