IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 26-362

STATE OF WEST VIRGINIA EX REL.
WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES,
Petitioner,

v.

THE HONORABLE BRIDGET COHEE,
JUDGE OF THE CIRCUIT COURT OF JEFFERSON COUNTY,
Respondent.

PETITION FOR WRIT OF PROHIBITION

WRIT GRANTED

Submitted: October 14, 2026
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JUSTICE FLANIGAN delivered the Opinion of the Court.
JUSTICE TRUMP concurs and reserves the right to file a concurring opinion.

SYLLABUS BY THE COURT

1. "In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight." Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996).

2. "Article V, section 1 of the Constitution of West Virginia which prohibits any one department of our state government from exercising the powers of the others, is not merely a suggestion; it is part of the fundamental law of our State and, as such, it must be strictly construed and closely followed." Syl. Pt. 1, *State ex rel. Barker v. Manchin*, 167 W. Va. 155, 279 S.E.2d 622 (1981).

FLANIGAN, Justice:

Petitioner, the Department of Human Services ("DHS"), invokes this Court's original jurisdiction, seeking a writ of prohibition to prevent enforcement of a June 4, 2026, order entered by the respondent, the Honorable Bridget Cohee, Judge of the Circuit Court of Jefferson County ("respondent"), directing it to file an abuse and neglect petition after it investigated allegations of abuse and found them unsubstantiated. DHS contends that the respondent has exercised executive authority in violation of Article V, section 1 of the West Virginia Constitution.[1] Having considered the parties' briefs and orals arguments, the submitted appendix record, and pertinent authorities, we agree and, therefore, grant the requested writ.

I. Facts and Procedural Background

On July 17, 2025, a hearing was held before the respondent on a juvenile delinquency petition brought against then-sixteen-year-old K.B.[2] for possession of a controlled substance. At that hearing, K.B. claimed that her mother and grandmother had physically and emotionally abused her and disposed of her prescription medication. Based on K.B.'s disclosures, the respondent entered an administrative order pursuant to Rule 3a

[1] Article V, section 1 of the West Virginia Constitution provides that "[t]he legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others[.]"

[2] We use initials rather than full names to protect the identities of the juveniles involved in this matter. *See* W. Va. R. App. Proc. 40(e).

of the Rules of Procedure for Child Abuse and Neglect Proceedings[3] commencing a separate administrative proceeding and directing DHS to conduct an investigation and submit a written investigation report to the court. The order acknowledged that K.B. no longer lived in her home because she had been placed in DHS's custody as a result of the delinquency matter but noted that five other children, K.B.'s siblings and half-siblings, resided there.

A month later, during a consolidated hearing for the delinquency case and the administrative proceeding, DHS reported that upon investigation, it was unable to substantiate K.B.'s allegations. Nonetheless, K.B.'s guardian ad litem ("guardian")[4] urged the respondent to order further investigation because the five children who resided in the home had not been individually interviewed. Pursuant to the guardian's request, the respondent entered another administrative order directing DHS to interview the children separately and apart from their parents. DHS complied with the circuit court's order, although one child, fourteen-year-old A.B., declined to speak with the investigating DHS worker.

[3] The relevant language of this rule is set forth herein.

[4] The respondent appointed the guardian for K.B. in her July 28, 2025, order that initiated the administrative proceeding.

At the next hearing, DHS again reported that K.B.'s allegations had not been substantiated, noting this time that several sources had indicated that K.B. was not always truthful. DHS further reported that the other children in the home were safe. However, it was noted that one of the children, L.M., who was six years old, disclosed that she had been sexually abused by A.B. one time at the family's prior home. L.M. also said that A.B. showed her pornographic images on his computer. Based on this disclosure, the respondent ordered DHS to "open a case" for services and a safety plan and closed the administrative proceeding. Two months later, in December 2025, the administrative proceeding was reopened during a status hearing held in the juvenile delinquency case when K.B.'s guardian advised that she had not been given an update on whether services had been put in place for the family.

At a January 2026 status hearing for both cases, the respondent inquired about what services had been provided to the family and whether A.B. had been required to undergo a psychosexual evaluation. DHS indicated that absent charges being filed against A.B., it could not compel an evaluation. The prosecutor stated that law enforcement had been notified about the alleged sexual abuse, but he had not received an investigative report and, therefore, did not know if charges would be filed against A.B. The guardian advised that K.B. told her that L.M. was not the first sibling to make an allegation against A.B.

The administrative proceeding continued, and the circuit court conducted status hearings for both cases in February, March, and April. Generally, the respondent and the parties discussed whether to bring a juvenile court case or an informal youth services case against A.B. The respondent repeatedly directed DHS to schedule a psychosexual evaluation for A.B. On more than one occasion, K.B.'s guardian noted that K.B. was unaware of the allegation made against A.B. concerning L.M. until she learned about it during the consolidated hearings. Eventually, K.B.'s guardian requested a second forensic interview for K.B. because of her disclosure that another sibling had made an allegation against A.B. The guardian also reported that the children's mother did not believe L.M.'s disclosure was true.

At the last hearing in May 2026, the respondent inquired as to why A.B. had still not had a psychosexual evaluation despite her prior directive. The prosecutor again advised that an evaluation could not be ordered because no charges had been filed against A.B., and A.B. could not be compelled to undergo an evaluation through an administrative proceeding. Further, the prosecutor indicated that she did not believe that a petition was going to be filed because of "questions about the timeline" and "the jurisdictional matters."[5] Although the prosecutor opined that the matter had "run its course," the

[5] The record before us is not clear, but it appears that the alleged sexual abuse of L.M. may have occurred in another county or possibly another state.

respondent disagreed stating, "If the mother doesn't participate,[6] that is abuse and neglect and failure to protect the younger child[.]" The hearing ended with the respondent indicating that before the matter could be closed, a plan was needed to address the issue with "the evaluation and treatment."

Thereafter, the respondent entered the June 4, 2026, "Administrative Order of Closure," closing the administrative proceeding, finding that it "has been rendered moot" based upon the following:

> (1) [A]s a result of the investigation by the Department of Human Services, which included allegations of sexual misconduct by a teenage child in the home towards another child of tender years in the home, and
>
> (2) the mother's noncompliance with a court-ordered psychosexual evaluation for the child alleged to have engaged in sexual misconduct, that the Safety Plan implemented by the Department has failed.

In the same order, the respondent ordered that DHS "shall file a [child abuse and neglect] Petition as a result of its investigation into the allegations set forth in the written referral on or before 14 days from entry of this Order." The order further provided that "[i]n the event that [DHS] fails to file the Petition, the [c]ourt hereby sets a show cause why the [DHS] shall not be held in contempt of [c]ourt."

[6] It appears that the respondent was referring to the mother's refusal to make A.B. undergo the psychosexual evaluation.

On June 22, 2026, DHS filed its petition for a writ of prohibition with this Court. By order entered on July 6, 2026, this Court stayed any further proceedings below pending resolution of this original jurisdiction matter.

II. Standard of Review

West Virginia Code § 53-1-1 provides that "[t]he writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers." We have held that

> [i]n determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996). We apply this standard to determine whether to grant the requested writ.

III. Discussion

In this original jurisdiction matter, we must decide whether the respondent exercised executive authority in violation of Article V, section 1 of the West Virginia Constitution when she sua sponte instituted an administrative proceeding to investigate an allegation of child abuse that arose during a juvenile delinquency proceeding and then subsequently ordered DHS to file an abuse and neglect petition. This Court has held that "Article V, section 1 of the Constitution of West Virginia which prohibits any one department of our state government from exercising the powers of the others, is not merely a suggestion; it is part of the fundamental law of our State and, as such, it must be strictly construed and closely followed." Syl. Pt. 1, *State ex rel. Barker v. Manchin*, 167 W. Va. 155, 279 S.E.2d 622 (1981). Further, this Court has made clear that a court acting as administrative agency in any capacity "violates the plain provisions of our Constitution." *Sims v. Fisher*, 125 W. Va. 512, 525, 25 S.E.2d 216, 222 (1943). Indeed, "[t]he West Virginia Constitution gives no general investigatory or supervisory powers to circuit courts over executive departments or agencies; its only supervisory authority is over magistrate courts." *State ex rel. W. Va. Dep't of Human Services v. Redding*, 253 W. Va. 522, ---, 931 S.E.2d 622, 632 (2026) (additional citation omitted).

We begin by considering DHS's contention that the respondent lacked authority to institute an administrative proceeding to investigate an allegation of child abuse that was made during a hearing in a juvenile delinquency case. Pre-petition investigations of abuse and neglect allegations are statutorily delegated to the executive

branch. In that regard, West Virginia Code § 49-2-802(b) provides that "[t]he local child protective services office shall investigate all reports of child abuse or neglect." Further, subsection (c)(3) provides that "[u]pon notification of suspected child abuse or neglect, [the local CPS office shall] commence or cause to be commenced a thorough investigation of the report and the child's environment." *Id.*, § 49-2-802(c)(3). Nonetheless, we have recognized that circuit courts are not "entirely removed from pre-petition inquiries." *Redding*, 253 W. Va. at ---, 931 S.E.2d at 633. However, their "role in that regard is carefully prescribed." *Id.*

With regard to pre-petition allegations of child abuse and neglect, West Virginia Code § 49-2-802(c)(6) provides that

> when any matter regarding *child custody is pending*, the circuit court or family court may refer allegations of child abuse and neglect to the local child protective services office for investigation of the allegations as defined by this chapter and require the local child protective services office to submit a written report of the investigation to the referring circuit court or family court within the time frames set forth by the circuit court or family court.

(Emphasis added). In addition, Rule 3a of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings provides: "Upon receiving a written *referral from a family court* pursuant to Rule 48 of the Rules of Practice and Procedure for Family Courts,[7] a

[7] Rule 48(a) of the Rules of Practice and Procedure for Family Courts provides:

> If a family court has reasonable cause to suspect any minor child involved in family court proceedings has been

circuit court shall forthwith cause to be entered and served an administrative order in the name of and regarding the affected child or children directing the Department to submit to the court an investigation report[.]") (emphasis added). In response to DHS's petition for prohibition relief, the respondent argues that both this statute and rule provided her with authority and jurisdiction to initiate the administrative proceeding below. However, as DHS points out, the allegations of abuse at issue here did not arise in a child custody proceeding and there was no written referral from a family court.

Here, the first allegation of abuse arose in the context of a juvenile delinquency proceeding. Juvenile proceedings are not child-custody matters as contemplated by West Virginia Code § 49-2-802(c)(6), nor do they involve a family court referral that would trigger application of Rule 3a of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings. Juvenile proceedings are governed by West Virginia Code §§ 49-4-701 to 735. There are no provisions within these statutes that authorize a circuit court to pursue and investigate allegations of abuse and/or neglect that arise during the course of juvenile proceedings. Likewise, the West Virginia Rules of Juvenile Procedure lack any such authorization.

> abused or neglected, that family court shall immediately report the suspected abuse and neglect to the state child protective services agency, pursuant to W. Va. Code §§ 49-2-802, 49-2-803, and the circuit court.

Certainly, the respondent, a circuit court judge, is mandated to report suspected abuse and neglect to DHS under West Virginia Code § 49-2-803.[8] However, a statutory obligation to report suspected abuse to DHS (imposed equally upon youth camp counselors and humane officers among others) did not empower the respondent to sua sponte initiate an administrative proceeding and require DHS to undertake a several months long investigation of the abuse allegations wherein she acted in a supervisory role. The record shows that the respondent repeatedly ordered DHS to keep investigating even after it indicated there was no evidence to substantiate the abuse allegations made by K.B. When the focus of the administrative proceeding turned to the sexual abuse allegation made against A.B., the respondent specified which social service agencies should be utilized and

[8] West Virginia Code § 49-2-803(a) (2024) provides, in relevant part:

> Any medical, dental, or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Human Services.

demanded that A.B. be required to undergo a psychosexual evaluation in an effort to determine whether the alleged sexual abuse had occurred.

The circuit court also held hearings in the matter jointly with the status hearings for K.B.'s delinquency proceeding. This resulted in K.B. hearing the specific graphic details of the alleged sexual abuse of her sibling. On more than one occasion, the circuit court was made aware that the administrative proceeding "negatively affected K.B . . . when she heard the whole extent of all the allegations made." Yet, the consolidated hearings continued. Notably, Rule 4 of the Rules of Procedure for Child Abuse and Neglect Proceedings expressly precludes the consolidation of abuse and neglect proceedings with delinquency matters. *See* R. of Pro. for Child Abuse & Neglect Proc. 4 ("A circuit court before which a civil petition is filed pursuant to W. Va. Code § 49-4-601, et seq., may order any other proceeding pending before another circuit court, family court, or magistrate court which arises out of the same facts alleged in the civil petition or involves the question of whether such abuse and neglect occurred transferred to the court where the civil petition is pending and may consolidate such proceedings, except criminal and delinquency proceedings, all in accordance with Rule 42 of the Rules of Civil Procedure and W. Va. Code § 56-9-1.").

The respondent not only acted without authority when she commenced the administrative proceeding, she clearly exceeded her legitimate powers when she proceeded to order DHS to file the abuse and neglect petition. As with pre-petition investigations, a

circuit court's authority to direct that an abuse and neglect petition be filed is limited. West Virginia Code § 49-4-601(a) provides:

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

The plain language of this statute[9] only allows DHS or a "reputable person" to file an abuse and neglect petition. A "reputable person" is an individual who believes that abuse and/or neglect is occurring or has occurred and has sufficient knowledge of the facts to verify the petition. *In re B.C.*, 233 W. Va. 130, 137, 755 S.E.2d 664, 671 (2014) (additional citation omitted). As used in this statute, "reputable person" does not include a circuit court judge, and the respondent makes no argument in that regard. Rather, she again argues that Rule 3a allowed her to order DHS to file the abuse and neglect petition. In addition, she contends that cases like *In re Randy H.*, 220 W. Va. 122, 640 S.E.2d 185 (2006), "support the conclusion that a circuit court should not remain a passive arbiter when significant allegations of abuse and neglect come to light as the result of a case before it."

[9] *See DeVane v. Kennedy*, 205 W. Va. 519, 529, 519 S.E.2d 622, 632 (1999) ("Where the language of a statutory provision is plain, its terms should be applied as written and not construed.").

. The respondent's reliance upon *Randy H.* is misplaced. In syllabus point five of that case, this Court held:

> To facilitate the prompt, fair and thorough resolution of abuse and neglect actions, if, in the course of a child abuse and/or neglect proceeding, a circuit court discerns from the evidence or allegations presented that reasonable cause exists to believe that additional abuse or neglect has occurred or is imminent which is not encompassed by the allegations contained in the Department of Health and Human Resource's petition, then pursuant to Rule 19 of the *Rules of Procedure for Child Abuse and Neglect Proceedings* [1997] the circuit court has the inherent authority to compel the Department to amend its petition to encompass the evidence or allegations.

Id., 220 W. Va. at 124, 640 S.E.2d at 187, syl. pt. 5. As DHS correctly argues, *Randy H.* has no application here because there was no abuse and neglect case already pending before the respondent involving the children allegedly abused with evidence of abuse already in the record. Our holding in *Randy H.* only applies in the context of an existing abuse and neglect proceeding. It has no utility in the absence of a pre-existing abuse and neglect petition and, therefore, could not be used as a means to compel DHS to file an abuse and neglect petition.

We have already established that Rule 3a has no application in this instance because no referral was made by a family court. However, even if Rule 3a did apply, it would not provide a basis for the respondent to direct DHS to file an abuse and neglect petition under these circumstances. As we have explained:

> Rule 3[a] provides that where the court makes an investigatory referral arising out of a child custody matter and DHS declines to file a petition, the circuit court may convert

> the referral to a mandamus action and issue a show cause order as to why a petition should not be filed if it disagrees with the investigatory findings. *See* W. Va. R. Child Abuse and Neglect Proceedings 3[a](b) ("Following review of an investigation report in which the Department concludes that a civil petition is unnecessary, if the circuit court believes that the information in the family court's written referral and the Department's investigation report, considered together, suggest circumstances upon which the Department would have a duty to file a civil petition, the court shall treat the written referral as a petition for a writ of mandamus in the name of and regarding the affected child or children."). However, even under such a mandamus proceeding, the circuit court is limited to determining whether DHS "has a nondiscretionary duty pursuant to W. Va. Code § 49-4-605 to file a petition seeking to terminate parental rights[ ]" and, importantly:
>
> > If it is determined that the circumstances bring the filing decision within the Department's discretionary authority, no such writ shall issue unless the court specifically finds aggravated circumstances, consistent with the meaning and usage of that term in W. Va. Code § 49-4-602(d)(1), and that the Department acted arbitrarily and capriciously in the exercise of its discretion.

Redding, 253 W. Va. at ---, 931 S.E.2d at 633 (emphasis added). So, even if Rule 3a was applicable, in the absence of substantiated allegations of sexual abuse, there is no evidence to support a finding that DHS had a duty to file an abuse and neglect petition.

We have no doubt that the respondent was well-intentioned and undertook what she perceived to be her required role and duty when she was presented with an allegation of child abuse during a juvenile delinquency proceeding. And we equally share her concern that sexual abuse allegedly committed by a teenager upon a younger sibling

was not being adequately addressed. However, "[a] Judge . . . should not summarily step from his judicial function and become an investigator, prosecutor, arresting officer, or instigator of legal actions. . . . [and] [n]o Judge should take unto himself activities or functions which are delegated to other branches of the government." *Matter of Goldston*, 246 W. Va. 61, 73, 866 S.E.2d 126, 138 (2021) (additional quotations and citation omitted). We have

> a well-established and carefully curated system that delegates to the executive branch the administrative oversight of children's care and well-being and vests the judiciary with the authority to adjudicate deficits in or dereliction of that care for children who are subject to pending judicial proceedings, providing the court with jurisdiction over them.

Redding, 253 W. Va. at ---, 931 S.E.2d at 632. The separation of powers doctrine demands that these roles remain distinct. The respondent's June 4, 2026, order exemplifies a clear encroachment into executive functions. The order is clearly erroneous and in excess of the respondent's legitimate powers. Accordingly, we must grant the requested writ of prohibition.

IV. Conclusion

For the foregoing reasons, we grant the requested writ of prohibition to prevent the respondent from enforcing the June 4, 2026, order requiring DHS to file an abuse and neglect petition. The Clerk of this Court is directed to issue the mandate contemporaneously with this opinion.

Writ granted.