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**H. B. 2748**

(By Delegates Ellington and Householder)

[Introduced February 13, 2015; referred to the  
Committee on the Judiciary.]

10 A BILL to amend and reenact §49-6-5 and §49-6-8 of the Code of West Virginia, 1931, as amended,  
11 all relating to living arrangements for children in foster care and living arrangements for  
12 children sixteen years or older; providing for considerations the court must consider when  
13 making a decision regarding planned permanent living arrangements; and setting forth  
14 necessary order provisions when the court is considering planned permanent living  
15 arrangements.

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

17 That §49-6-5 and §49-6-8 of the Code of West Virginia, 1931, as amended, be amended and  
18 reenacted, all to read as follows:

19 **ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**

20 **§49-6-5. Disposition of neglected or abused children.**

21 (a) Following a determination pursuant to section two of this article wherein the court finds

1 a child to be abused or neglected, the department shall file with the court a copy of the child's case  
2 plan, including the permanency plan for the child. The term case plan means a written document that  
3 includes, where applicable, the requirements of the family case plan as provided for in section three,  
4 article six-d of this chapter and that also includes at least the following: A description of the type of  
5 home or institution in which the child is to be placed, including a discussion of the appropriateness  
6 of the placement and how the agency which is responsible for the child plans to assure that the child  
7 receives proper care and that services are provided to the parents, child and foster parents in order  
8 to improve the conditions in the parent(s) home; facilitate return of the child to his or her own home  
9 or the permanent placement of the child; and address the needs of the child while in foster care,  
10 including a discussion of the appropriateness of the services that have been provided to the child.  
11 The term "permanency plan" refers to that part of the case plan which is designed to achieve a  
12 permanent home for the child in the least restrictive setting available. The plan ~~must~~ shall document  
13 efforts to ensure that the child is returned home within approximate time lines for reunification as  
14 set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian may be  
15 made at the same time reasonable efforts are made to prevent removal or to make it possible for a  
16 child to safely return home. If reunification is not the permanency plan for the child, the plan ~~must~~  
17 shall state why reunification is not appropriate and detail the alternative placement for the child to  
18 include approximate time lines for when such placement is expected to become a permanent  
19 placement. This case plan shall serve as the family case plan for parents of abused or neglected  
20 children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian or  
21 custodian or their counsel at least five days prior to the dispositional hearing. The court shall

1 forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be  
2 heard. The court shall give precedence to dispositions in the following sequence:

3 (1) Dismiss the petition;

4 (2) Refer the child, the abusing parent, the battered parent or other family members to a  
5 community agency for needed assistance and dismiss the petition;

6 (3) Return the child to his or her own home under supervision of the department;

7 (4) Order terms of supervision calculated to assist the child and any abusing parent or  
8 battered parent or parents or custodian which prescribe the manner of supervision and care of the  
9 child and which are within the ability of any parent or parents or custodian to perform;

10 (5) Upon a finding that the abusing parent or battered parent or parents are presently  
11 unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the  
12 custody of the state department, a licensed private child welfare agency or a suitable person who may  
13 be appointed guardian by the court. The court order shall state:

14 (A) That continuation in the home is contrary to the best interests of the child and why;

15 (B) Whether or not the department has made reasonable efforts, with the child's health and  
16 safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent  
17 or eliminate the need for removing the child from the child's home and to make it possible for the  
18 child to safely return home;

19 (C) What efforts were made or that the emergency situation made such efforts unreasonable  
20 or impossible; and

21 (D) The specific circumstances of the situation which made such efforts unreasonable if

1 services were not offered by the department. The court order shall also determine under what  
2 circumstances the child's commitment to the department shall continue. Considerations pertinent  
3 to the determination include whether the child should:

4 (i) Be continued in foster care for a specified period;

5 (ii) Be considered for adoption;

6 (iii) Be considered for legal guardianship;

7 (iv) Be considered for permanent placement with a fit and willing relative; or

8 (v) Be placed in another planned permanent living arrangement, but only in cases where the  
9 child has attained sixteen years of age and the department has documented to the circuit court a  
10 compelling reason for determining that it would not be in the best interests of the child to follow one  
11 of the options set forth in subparagraphs (i), (ii), (iii) or (iv) of this paragraph. The court may order  
12 services to meet the special needs of the child. Whenever the court transfers custody of a youth to  
13 the department, an appropriate order of financial support by the parents or guardians shall be entered  
14 in accordance with section five, article seven of this chapter; or

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

- 1 (A) The child's need for continuity of care and caretakers;
- 2 (B) The amount of time required for the child to be integrated into a stable and permanent  
3 home environment; and
- 4 (C) Other factors as the court considers necessary and proper. Notwithstanding any other  
5 provision of this article, the court shall give consideration to the wishes of a child fourteen years of  
6 age or older or otherwise of an age of discretion as determined by the court regarding the permanent  
7 termination of parental rights. No adoption of a child ~~shall~~ may take place until all proceedings for  
8 termination of parental rights under this article and appeals thereof are final. In determining whether  
9 or not parental rights should be terminated, the court shall consider the efforts made by the  
10 department to provide remedial and reunification services to the parent. The court order shall state:
  - 11 (i) That continuation in the home is not in the best interest of the child and why;
  - 12 (ii) Why reunification is not in the best interests of the child;
  - 13 (iii) Whether or not the department made reasonable efforts, with the child's health and safety  
14 being the paramount concern, to preserve the family, or some portion thereof, and to prevent the  
15 placement or to eliminate the need for removing the child from the child's home and to make it  
16 possible for the child to safely return home, or that the emergency situation made such efforts  
17 unreasonable or impossible; and
  - 18 (iv) Whether or not the department made reasonable efforts to preserve and reunify the  
19 family, or some portion thereof, including a description of what efforts were made or that such  
20 efforts were unreasonable due to specific circumstances.
- 21 (7) For purposes of the court's consideration of the disposition custody of a child pursuant

1 to the provisions of this subsection, the department is not required to make reasonable efforts to  
2 preserve the family if the court determines:

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

7 (B) The parent has:

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

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

14 (iii) Attempted or conspired to commit such a murder or voluntary manslaughter or been an  
15 accessory before or after the fact to either such crime;

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

19 (v) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian  
20 or custodian, another child of the parent or any other child residing in the same household or under  
21 the temporary or permanent custody of the parent; or

1 (vi) Has been required by state or federal law to register with a sex offender registry; or

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

3 (D) A parent has been required by state or federal law to register with a sex offender registry,

4 and the court has determined in consideration of the nature and circumstances surrounding the prior

5 charges against that parent, that the child’s interests would not be promoted by a preservation of the

6 family.

7 (b) As used in this section, "no reasonable likelihood that conditions of neglect or abuse can

8 be substantially corrected" ~~shall~~ means that, based upon the evidence before the court, the abusing

9 adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect

10 on their own or with help. Such conditions shall be considered to exist in the following

11 circumstances, which ~~shall not be~~ are not exclusive:

12 (1) The abusing parent or parents have habitually abused or are addicted to alcohol,

13 controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired

14 and such person or persons have not responded to or followed through the recommended and

15 appropriate treatment which could have improved the capacity for adequate parental functioning;

16 (2) The abusing parent or parents have willfully refused or are presently unwilling to

17 cooperate in the development of a reasonable family case plan designed to lead to the child's return

18 to their care, custody and control;

19 (3) The abusing parent or parents have not responded to or followed through with a

20 reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other

21 rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced

1 by the continuation or insubstantial diminution of conditions which threatened the health, welfare  
2 or life of the child;

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

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

9 (6) The abusing parent or parents have incurred emotional illness, mental illness or mental  
10 deficiency of such duration or nature as to render such parent or parents incapable of exercising  
11 proper parenting skills or sufficiently improving the adequacy of such skills; or

12 (7) The battered parent's parenting skills have been seriously impaired and said person has  
13 willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable  
14 treatment plan or has not adequately responded to or followed through with the recommended and  
15 appropriate treatment plan.

16 (c) The court may, as an alternative disposition, allow the parents or custodians an  
17 improvement period not to exceed six months. During this period the court shall require the parent  
18 to rectify the conditions upon which the determination was based. The court may order the child to  
19 be placed with the parents, or any person found to be a fit and proper person, for the temporary care  
20 of the child during the period. At the end of the period, the court shall hold a hearing to determine  
21 whether the conditions have been adequately improved and at the conclusion of the hearing shall

1 make a further dispositional order in accordance with this section.

2 **§49-6-8. Permanency hearing and permanent placement review.**

3 (a) If the court finds, pursuant to any provision of this article, that the department is not  
4 required to make reasonable efforts to preserve the family, then, notwithstanding any other provision,  
5 a permanency hearing must be held within thirty days following the entry of the court order so  
6 finding, and a permanent placement review hearing must be conducted at least once every three  
7 calendar months thereafter until a permanent placement is achieved.

8 (b) If, twelve months after receipt by the department or its authorized agent of physical  
9 custody of a child either by a court ordered placement or by a voluntary agreement, the department  
10 has not placed a child in an adoptive home or placed the child with a natural parent or placed the  
11 child in legal guardianship or permanently placed the child with a fit and willing relative, the court  
12 shall hold a permanency hearing. The department shall file a report with the court detailing the  
13 efforts that have been made to place the child in a permanent home and copies of the child's case  
14 plan, including the permanency plan as defined in section five, article six of this chapter. Copies of  
15 the report shall be sent to the parties and all persons entitled to notice and the right to be heard. The  
16 court shall schedule a hearing, giving notice and the right to be present to: The child's attorney; the  
17 child, if twelve years of age or older; the child's parents; the child's guardians; the child's foster  
18 parents; any preadoptive parent or any relative providing care for the child; any person entitled to  
19 notice and the right to be heard; and such other persons as the court may, ~~in its discretion,~~ direct.  
20 The child's presence may be waived by the child's attorney at the request of the child or if the child  
21 would suffer emotional harm. The purpose of the hearing is to review the child's case, to determine

1 whether and under what conditions the child's commitment to the department shall continue and to  
2 determine what efforts are necessary to provide the child with a permanent home. In the case of a  
3 child who will not be returned to his or her parent, the court shall consider in-state and out-of-state  
4 placement options, and, if the court considers an out-of-state placement, the court shall determine  
5 whether such placement is in the best interests of the child; in the case of a child who has attained  
6 sixteen years of age, the court shall determine the services needed to assist the child to make the  
7 transition from foster care to independent living. In any case in which the court decides to order the  
8 child placed in an out-of-state facility or program it shall set forth in the order directing the  
9 placement the reasons why the child was not placed in an in-state facility or program. At the  
10 conclusion of the hearing the court shall, in accordance with the best interests of the child, enter an  
11 order containing all such appropriate findings. The court order shall state: (1) Whether or not the  
12 department made reasonable efforts to preserve the family and to prevent out-of-home placement  
13 or that the specific situation made such effort unreasonable; (2) whether or not the department made  
14 reasonable efforts to finalize the permanency plan for the child; and (3) identify services required  
15 to meet the child's needs.

16 (c) In the case of any child for whom another planned permanent living arrangement is the  
17 permanency plan, the court shall:

18 (1) Inquire of the child about the desired permanency outcome for the child;

19 (2) Make a judicial determination explaining why, as of the date of the hearing, another  
20 planned permanent living arrangement is the best permanency plan for the child; and

21 (3) Provide in the court order compelling reasons why it continues not to be in the best

1 interest of the child to:

2 (i) Return home;

3 (ii) Be placed for adoption;

4 (iii) Be placed with a legal guardian; or,

5 (iv) Be placed with a fit and willing relative.

6 ~~(c)~~ (d) The court shall conduct another permanency hearing within twelve months thereafter  
7 for each child who remains in the physical or legal custody of the department until the child is placed  
8 in an adoptive home or returned to his or her parents or placed in legal guardianship or permanently  
9 placed with a fit and willing relative.

10 ~~(d)~~ (e) The state department shall annually report to the court the current status of the  
11 placements of children in permanent care and custody of the state department who have not been  
12 adopted.

13 ~~(e)~~ (f) The state department shall file a report with the court in any case where any child in  
14 the temporary or permanent custody of the state receives more than three placements in one year no  
15 later than thirty days after the third placement. This report shall be provided to all parties and  
16 persons entitled to notice and the right to be heard. Upon motion by any party, the court shall review  
17 these placements and determine what efforts are necessary to provide the child with a permanent  
18 home: *Provided, That no a report shall may not be provided to any parent or parent's attorney whose*  
19 *parental rights have been terminated pursuant to this article.*

20 ~~(f)~~ (g) The state department shall notify, in writing, the court, the child, if over the age of  
21 twelve, the child's attorney, the parents and the parents' attorney forty-eight hours prior to the move

1 if this is a planned move, or within forty-eight hours of the next business day after the move if this  
2 is an emergency move, except where such notification would endanger the child or the foster family.  
3 This notice shall not be required in any case where the child is in imminent danger in the child's  
4 current placement. The location of the child need not be disclosed, but the purpose of the move  
5 should be. This requirement is not waived by placement of the child in a home or other residence  
6 maintained by a private provider. ~~No~~ A notice ~~shall~~ may not be provided pursuant to this provision  
7 to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

8 ~~(g)~~ (h) Nothing in this article precludes any party from petitioning the court for review of the  
9 child's case at any time. The court shall grant ~~such~~ the petition upon a showing that there is a change  
10 in circumstance or needs of the child that warrants court review.

11 ~~(h)~~ (i) Any foster parent, preadoptive parent or relative providing care for the child shall be  
12 given notice of and the right to be heard at the permanency hearing provided in this section.

NOTE: The purpose of this bill is to provide living arrangements for children sixteen years or older in foster care. The bill provides matters the court must consider when making a decision regarding planned permanent living arrangements and it sets forth necessary order provisions when the court is considering planned permanent living arrangements.

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