

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **Senate Bill 78**

BY SENATOR SMITH

[Introduced January 8, 2020; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-605 of the Code of West Virginia, 1931, as amended, relating  
 2 to termination of parental rights; and requiring the Department of Health and Human  
 3 Resources to file a petition to terminate parental rights when a parent has, on two separate  
 4 occasions, had their child removed from their care and determined by a court to have  
 5 subjected that child to abuse or neglect.

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

**ARTICLE 4. COURT ACTIONS.**

**§49-4-605. When department efforts to terminate parental rights are required.**

1 (a) Except as provided in subsection (b) of this section, the department shall file or join in  
 2 a petition or otherwise seek a ruling in any pending proceeding to terminate parental rights:

3 (1) If a child has been in foster care for 15 of the most recent 22 months as determined by  
 4 the earlier of the date of the first judicial finding that the child is subjected to abuse or neglect or  
 5 the date which is 60 days after the child is removed from the home;

6 (2) If a court has determined the child is abandoned, tortured, sexually abused, or  
 7 chronically abused;

8 (3) If a court has determined the parent has committed murder or voluntary manslaughter  
 9 of another of his or her children, another child in the household, or the other parent of his or her  
 10 children; has attempted or conspired to commit murder or voluntary manslaughter or has been an  
 11 accessory before or after the fact of either crime; has committed unlawful or malicious wounding  
 12 resulting in serious bodily injury to the child or to another of his or her children, another child in  
 13 the household or to the other parent of his or her children; has committed sexual assault or sexual  
 14 abuse of the child, the child’s other parent, guardian or custodian, another child of the parent or  
 15 any other child residing in the same household or under the temporary or permanent custody of  
 16 the parent; or the parental rights of the parent to another child have been terminated involuntarily;  
 17 or

18 (4) If a parent whose child has been removed from the parent’s care, custody, and control

19 by an order of removal voluntarily fails to have contact or attempt to have contact with the child  
20 for a period of 18 consecutive months: *Provided*, That failure to have, or attempt to have, contact  
21 due to being incarcerated, being in a medical or drug treatment or recovery facility, or being on  
22 active military duty shall not be considered voluntary behavior; or

23 (5) If a child has been removed from the parent's care, custody, and control and the court  
24 has made judicial findings that the child has been subjected to abuse or neglect on two or more  
25 occasions.

26 (b) The department may determine not to file a petition to terminate parental rights when:

27 (1) At the option of the department, the child has been placed permanently with a relative  
28 by court order;

29 (2) The department has documented in the case plan made available for court review a  
30 compelling reason, including, but not limited to, the child's age and preference regarding  
31 termination or the child's placement in custody of the department based on any proceedings  
32 initiated under part seven of this article, that filing the petition would not be in the best interests of  
33 the child; or

34 (3) The department has not provided, when reasonable efforts to return a child to the  
35 family are required, the services to the child's family as the department deems necessary for the  
36 safe return of the child to the home.

NOTE: The purpose of this bill is to require the department to file a petition to terminate parental rights when a parent whose child has been removed from their care and determined by a court to have subjected that child to abuse or neglect on two or more separate occasions.

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