

SB 445

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2002*



**ENROLLED**

*Committee Substitute for*

**SENATE BILL NO.** 445

(By Senator Chabin )



**PASSED** March 9, 2002

**In Effect** ninety days from **Passage**

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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 445**

(SENATOR CHAFIN, *original sponsor*)

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[Passed March 9, 2002; in effect ninety days from passage.]

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AN ACT to amend and reenact sections five and eight, article six, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the disposition of abused or neglected children; and providing that all placement alternatives be found by the court to be unsuitable and contrary to the best interests of the child before long-term or permanent foster care be considered.

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

That sections five and eight, article six, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

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

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

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

36 plan shall be sent to the child's attorney and parent,  
37 guardian or custodian or their counsel at least five days  
38 prior to the dispositional hearing. The court shall forth-  
39 with proceed to disposition giving both the petitioner and  
40 respondents an opportunity to be heard. The court shall  
41 give precedence to dispositions in the following sequence:

42 (1) Dismiss the petition;

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

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

48 (4) Order terms of supervision calculated to assist the  
49 child and any abusing parent or parents or custodian  
50 which prescribe the manner of supervision and care of the  
51 child and which are within the ability of any parent or  
52 parents or custodian to perform;

53 (5) Upon a finding that the abusing parent or parents are  
54 presently unwilling or unable to provide adequately for  
55 the child's needs, commit the child temporarily to the  
56 custody of the state department, a licensed private child  
57 welfare agency or a suitable person who may be appointed  
58 guardian by the court. The court order shall state: (A)  
59 That continuation in the home is contrary to the best  
60 interests of the child and why; (B) whether or not the  
61 department has made reasonable efforts, with the child's  
62 health and safety being the paramount concern, to pre-  
63 serve the family and to prevent or eliminate the need for  
64 removing the child from the child's home and to make it  
65 possible for the child to safely return home; (C) what  
66 efforts were made or that the emergency situation made  
67 such efforts unreasonable or impossible; and (D) the  
68 specific circumstances of the situation which made such  
69 efforts unreasonable if services were not offered by the  
70 department. The court order shall also determine under

71 what circumstances the child's commitment to the depart-  
72 ment shall continue. Considerations pertinent to the  
73 determination include whether the child should: (i) Be  
74 continued in foster care for a specified period; (ii) be  
75 considered for adoption; (iii) be considered for legal  
76 guardianship; (iv) be considered for permanent placement  
77 with a fit and willing relative; or (v) be placed in another  
78 planned permanent living arrangement, but only in cases  
79 where the department has documented to the circuit court  
80 a compelling reason for determining that it would not be  
81 in the best interests of the child to follow one of the  
82 options set forth in subparagraphs (i), (ii), (iii) or (iv) of  
83 this paragraph. The court may order services to meet the  
84 special needs of the child. Whenever the court transfers  
85 custody of a youth to the department, an appropriate order  
86 of financial support by the parents or guardians shall be  
87 entered in accordance with section five, article seven of  
88 this chapter; or

89 (6) Upon a finding that there is no reasonable likelihood  
90 that the conditions of neglect or abuse can be substantially  
91 corrected in the near future and, when necessary for the  
92 welfare of the child, terminate the parental, custodial or  
93 guardianship rights and/or responsibilities of the abusing  
94 parent and commit the child to the permanent sole custody  
95 of the nonabusing parent, if there be one, or, if not, to  
96 either the permanent guardianship of the department or a  
97 licensed child welfare agency. If the court shall so find,  
98 then in fixing its dispositional order the court shall  
99 consider the following factors: (A) The child's need for  
100 continuity of care and caretakers; (B) the amount of time  
101 required for the child to be integrated into a stable and  
102 permanent home environment; and (C) other factors as the  
103 court considers necessary and proper. Notwithstanding  
104 any other provision of this article, the court shall give  
105 consideration to the wishes of a child fourteen years of age  
106 or older or otherwise of an age of discretion as determined  
107 by the court regarding the permanent termination of  
108 parental rights. No adoption of a child shall take place

109 until all proceedings for termination of parental rights  
110 under this article and appeals thereof are final. In deter-  
111 mining whether or not parental rights should be termi-  
112 nated, the court shall consider the efforts made by the  
113 department to provide remedial and reunification services  
114 to the parent. The court order shall state: (i) That continu-  
115 ation in the home is not in the best interest of the child and  
116 why; (ii) why reunification is not in the best interests of  
117 the child; (iii) whether or not the department made reason-  
118 able efforts, with the child's health and safety being the  
119 paramount concern, to preserve the family and to prevent  
120 the placement or to eliminate the need for removing the  
121 child from the child's home and to make it possible for the  
122 child to safely return home, or that the emergency situa-  
123 tion made such efforts unreasonable or impossible; and (iv)  
124 whether or not the department made reasonable efforts to  
125 preserve and reunify the family including a description of  
126 what efforts were made or that such efforts were unrea-  
127 sonable due to specific circumstances.

128 (7) For purposes of the court's consideration of the  
129 disposition custody of a child pursuant to the provisions of  
130 this subsection, the department is not required to make  
131 reasonable efforts to preserve the family if the court  
132 determines:

133 (A) The parent has subjected the child to aggravated  
134 circumstances which include, but are not limited to,  
135 abandonment, torture, chronic abuse and sexual abuse;

136 (B) The parent has:

137 (i) Committed murder of another child of the parent;

138 (ii) Committed voluntary manslaughter of another child  
139 of the parent;

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

143 (iv) Committed a felonious assault that results in serious  
144 bodily injury to the child or to another child of the parent;  
145 or

146 (C) The parental rights of the parent to a sibling have  
147 been terminated involuntarily.

148 (b) As used in this section, "no reasonable likelihood that  
149 conditions of neglect or abuse can be substantially cor-  
150 rected" shall mean that, based upon the evidence before  
151 the court, the abusing adult or adults have demonstrated  
152 an inadequate capacity to solve the problems of abuse or  
153 neglect on their own or with help. Such conditions shall  
154 be considered to exist in the following circumstances,  
155 which shall not be exclusive:

156 (1) The abusing parent or parents have habitually abused  
157 or are addicted to alcohol, controlled substances or drugs,  
158 to the extent that proper parenting skills have been  
159 seriously impaired and such person or persons have not  
160 responded to or followed through the recommended and  
161 appropriate treatment which could have improved the  
162 capacity for adequate parental functioning;

163 (2) The abusing parent or parents have willfully refused  
164 or are presently unwilling to cooperate in the development  
165 of a reasonable family case plan designed to lead to the  
166 child's return to their care, custody and control;

167 (3) The abusing parent or parents have not responded to  
168 or followed through with a reasonable family case plan or  
169 other rehabilitative efforts of social, medical, mental  
170 health or other rehabilitative agencies designed to reduce  
171 or prevent the abuse or neglect of the child, as evidenced  
172 by the continuation or insubstantial diminution of condi-  
173 tions which threatened the health, welfare or life of the  
174 child;

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

177 (5) The abusing parent or parents have repeatedly or  
178 seriously injured the child physically or emotionally, or  
179 have sexually abused or sexually exploited the child, and  
180 the degree of family stress and the potential for further  
181 abuse and neglect are so great as to preclude the use of  
182 resources to mitigate or resolve family problems or assist  
183 the abusing parent or parents in fulfilling their responsi-  
184 bilities to the child; or

185 (6) The abusing parent or parents have incurred emo-  
186 tional illness, mental illness or mental deficiency of such  
187 duration or nature as to render such parent or parents  
188 incapable of exercising proper parenting skills or suffi-  
189 ciently improving the adequacy of such skills.

190 (c) The court may, as an alternative disposition, allow  
191 the parents or custodians an improvement period not to  
192 exceed six months. During this period the court shall  
193 require the parent to rectify the conditions upon which the  
194 determination was based. The court may order the child  
195 to be placed with the parents, or any person found to be a  
196 fit and proper person, for the temporary care of the child  
197 during the period. At the end of the period, the court shall  
198 hold a hearing to determine whether the conditions have  
199 been adequately improved and at the conclusion of the  
200 hearing shall make a further dispositional order in accor-  
201 dance with this section.

**§49-6-8. Foster care review; annual reports to the court.**

1 (a) If, twelve months after receipt by the department or  
2 its authorized agent of physical custody of a child either  
3 by a court ordered placement or by a voluntary agreement,  
4 the department has not placed a child in an adoptive home  
5 or placed the child with a natural parent or placed the  
6 child in legal guardianship or permanently placed the  
7 child with a fit and willing relative, the department shall  
8 file with the court a petition for review of the case. The  
9 department shall also file with the court a report detailing  
10 the efforts that have been made to place the child in a

11 permanent home and copies of the child's case plan,  
12 including the permanency plan as defined in section five,  
13 article six of this chapter. Copies of the report shall be  
14 sent to the child's attorney and be made available to the  
15 child's parent(s) or guardian. The court shall schedule a  
16 hearing in chambers, giving notice and the right to be  
17 present to: The child's attorney; the child, if twelve years  
18 of age or older; the child's parents; the child's guardians;  
19 the child's foster parents; any preadoptive parent or any  
20 relative providing care for the child; and such other  
21 persons as the court may, in its discretion, direct. The  
22 child's presence may be waived by the child's attorney at  
23 the request of the child or if the child would suffer emo-  
24 tional harm. The purpose of the hearing is to review the  
25 child's case, to determine whether and under what condi-  
26 tions the child's commitment to the department shall  
27 continue and to determine what efforts are necessary to  
28 provide the child with a permanent home. At the conclu-  
29 sion of the hearing the court shall, in accordance with the  
30 best interests of the child, enter an appropriate order of  
31 disposition. The court order shall state: (1) Whether or not  
32 the department made reasonable efforts to preserve the  
33 family and to prevent out-of-home placement or that the  
34 specific situation made such effort unreasonable; (2) the  
35 permanency plan for the child; and (3) services required to  
36 meet the child's needs: *Provided*, That the department is  
37 not required to make reasonable efforts to preserve the  
38 family if the court determines any of the conditions set  
39 forth in subdivision (7), subsection (a), section five of this  
40 article exist. The court shall possess continuing jurisdic-  
41 tion over cases reviewed under this section for so long as  
42 a child remains in temporary foster care or, when a child  
43 is returned to his or her natural parents subject to condi-  
44 tions imposed by the court, for so long as the conditions  
45 are effective.

46 (b) The state department shall file a supplementary  
47 petition for review with the court within twelve months  
48 and every twelve months thereafter for every child that

49 remains in the physical or legal custody of the state  
50 department until the child is placed in an adoptive home  
51 or returned to his or her parents or placed in legal guard-  
52 ianship or permanently placed with a fit and willing  
53 relative.

54 (c) The state department shall annually report to the  
55 court the current status of the placements of children in  
56 permanent care and custody of the state department who  
57 have not been adopted.

58 (d) The state department shall file a report with the court  
59 in any case where any child in the temporary or permanent  
60 custody of the state receives more than three placements  
61 in one year no later than thirty days after the third place-  
62 ment. This report shall be provided to all parties and their  
63 counsel. Upon motion by any party, the court shall review  
64 these placements and determine what efforts are necessary  
65 to provide the child with a stable foster or temporary  
66 home: *Provided*, That no report shall be provided to any  
67 parent or parent's attorney whose parental rights have  
68 been terminated pursuant to this article.

69 (e) The state department shall notify, in writing, the  
70 court, the child, if over the age of twelve, the child's  
71 attorney, the parents and the parents' attorney forty-eight  
72 hours prior to the move if this is a planned move, or within  
73 forty-eight hours of the next business day after the move  
74 if this is an emergency move, except where such notifica-  
75 tion would endanger the child or the foster family. This  
76 notice shall not be required in any case where the child is  
77 in imminent danger in the child's current placement. The  
78 location of the child need not be disclosed, but the purpose  
79 of the move should be. This requirement is not waived by  
80 placement of the child in a home or other residence  
81 maintained by a private provider. No notice shall be  
82 provided pursuant to this provision to any parent or  
83 parent's attorney whose parental rights have been termi-  
84 nated pursuant to this article.

85 (f) Nothing in this article precludes any party from  
86 petitioning the court for review of the child's case at any  
87 time. The court shall grant such petition upon a showing  
88 that there is a change in circumstance or needs of the child  
89 that warrants court review.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is appended* this the *28th*  
Day of *March*, 2002.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/22/02

Time 9:55am