

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 67**

**FISCAL  
NOTE**

By Senator Smith

[Introduced January 11, 2023; referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

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 §49-4-605(b) of this code, the department shall file or join in a  
2 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 the  
5 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 the  
13 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

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

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

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

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

(2) The department has documented in the case plan made available for court review a compelling reason, including, but not limited to, the child's age and preference regarding termination or the child's placement in custody of the department based on any proceedings initiated under §49-4-701 *et seq.* of this code, that filing the petition would not be in the best interests of the child; or

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