

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **Senate Bill 438**

By Senator Deeds

[Introduced January 16, 2026; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-605 and §49-4-610 of the Code of West Virginia, 1931, as  
2 amended, relating to increasing circumstances where the Department of Human Services  
3 is required to seek termination of parental rights; and increasing circumstances where the  
4 time limit for a respondent parent's improvement period, or combination or extension of the  
5 respondent parent's improvement period, applies.

*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 any of the following placements: foster care, kinship placement,  
4 residential facility, or the care of a non-offending parent for 15 of the most recent 22 months as  
5 determined by the earlier of the date of the first judicial finding that the child is subjected to abuse  
6 or neglect or the date which is 60 days after the child is removed from the home;

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

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

(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.

(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 part seven of this article, 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.

**§49-4-610. Improvement periods in cases of child neglect or abuse; findings; orders; extensions; hearings; time limits.**

In any proceeding brought pursuant to this article, the court may grant any respondent an improvement period in accord with this article. During the period, the court may require temporary custody with a responsible person which has been found to be a fit and proper person for the temporary custody of the child or children or the state department or other agency during the improvement period. An order granting an improvement period shall require the department to prepare and submit to the court a family case plan in accordance with section four hundred eight, of this article. The types of improvement periods are as follows:

(1) *Preadjudicatory improvement period.* -- A court may grant a respondent an

improvement period of a period not to exceed three months prior to making a finding that a child is abused or neglected pursuant to section six hundred one of this article only when:

(A) The respondent files a written motion requesting the improvement period;

(B) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(C) In the order granting the improvement period, the court:

(i) Orders that a hearing be held to review the matter within sixty days of the granting of the improvement period; or

(ii) Orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondents progress in the improvement period within sixty days of the order granting the improvement period; and

(D) The order granting the improvement period requires the department to prepare and submit to the court an individualized family case plan in accordance with section four hundred eight of this article;

(2) *Post-adjudicatory improvement period.* -- After finding that a child is an abused or neglected child pursuant to section six hundred one of this article, a court may grant a respondent an improvement period of a period not to exceed six months when:

(A) The respondent files a written motion requesting the improvement period;

(B) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(C) In the order granting the improvement period, the court:

(i) orders that a hearing be held to review the matter within thirty days of the granting of the improvement period; or

(ii) orders that a hearing be held to review the matter within ninety days of the granting of

the improvement period and that the department submit a report as to the respondent's progress in the improvement period within sixty days of the order granting the improvement period;

(D) Since the initiation of the proceeding, the respondent has not previously been granted any improvement period or the respondent demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances. Further, the respondent shall demonstrate that due to that change in circumstances the respondent is likely to fully participate in a further improvement period; and

(E) The order granting the improvement period requires the department to prepare and submit to the court an individualized family case plan in accordance with section four hundred eight of this article.

(3) *Post-dispositional improvement period.* – The court may grant an improvement period not to exceed six months as a disposition pursuant to section six hundred four of this article when:

(A) The respondent moves in writing for the improvement period;

(B) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(C) In the order granting the improvement period, the court:

(i) Orders that a hearing be held to review the matter within sixty days of the granting of the improvement period; or

(ii) Orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondent's progress in the improvement period within sixty days of the order granting the improvement period;

(D) Since the initiation of the proceeding, the respondent has not previously been granted any improvement period or the respondent demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances. Further, the respondent shall demonstrate that due to that change in circumstances, the respondent is likely to fully

61 participate in the improvement period; and

62 (E) The order granting the improvement period shall require the department to prepare and  
63 submit to the court an individualized family case plan in accordance with section four hundred  
64 eight of this article.

65 (4) *Responsibilities of the respondent receiving improvement period.* --

66 (A) When any improvement period is granted to a respondent pursuant to this section, the  
67 respondent shall be responsible for the initiation and completion of all terms of the improvement  
68 period. The court may order the state department to pay expenses associated with the services  
69 provided during the improvement period when the respondent has demonstrated that he or she is  
70 unable to bear the expenses.

71 (B) When any improvement period is granted to a respondent pursuant to this section, the  
72 respondent shall execute a release of all medical information regarding that respondent, including,  
73 but not limited to, information provided by mental health and substance abuse professionals and  
74 facilities. The release shall be accepted by a professional or facility regardless of whether the  
75 release conforms to any standard required by that facility.

76 (5) *Responsibilities of the department during improvement period.* -- When any respondent  
77 is granted an improvement period pursuant to this article, the department shall monitor the  
78 progress of the person in the improvement period. This section may not be construed to prohibit a  
79 court from ordering a respondent to participate in services designed to reunify a family or to relieve  
80 the department of any duty to make reasonable efforts to reunify a family required by state or  
81 federal law.

82 (6) *Extension of improvement period.* -- A court may extend any improvement period  
83 granted pursuant to subdivision (2) or (3) of this section for a period not to exceed three months  
84 when the court finds that the respondent has substantially complied with the terms of the  
85 improvement period; that the continuation of the improvement period will not substantially impair  
86 the ability of the department to permanently place the child; and that the extension is otherwise

87 consistent with the best interest of the child.

88       (7) *Termination of improvement period.* -- Upon the motion by any party, the court shall  
89 terminate any improvement period granted pursuant to this section when the court finds that  
90 respondent has failed to fully participate in the terms of the improvement period or has satisfied the  
91 terms of the improvement period to correct any behavior alleged in the petition or amended  
92 petition to make his or her child unsafe.

93       (8) *Hearings on improvement period.* --

94       (A) Any hearing scheduled pursuant to this section may be continued only for good cause  
95 upon a written motion properly served on all parties. When a court grants a continuance, the court  
96 shall enter an order granting the continuance specifying a future date when the hearing will be  
97 held.

98       (B) Any hearing to be held at the end of an improvement period shall be held as nearly as  
99 practicable on successive days and shall be held as close in time as possible after the end of the  
100 improvement period and shall be held no later than thirty days of the termination of the  
101 improvement period.

102       (9) *Time limit for improvement periods.* -- Notwithstanding any other provision of this  
103 section, no combination of any improvement periods or extensions thereto may cause a child to be  
104 in any of the following placements: foster care, kinship placement, residential facility, or the care of  
105 a non-offending parent more than fifteen months of the most recent twenty-two months, unless the  
106 court finds compelling circumstances by clear and convincing evidence that it is in the child's best  
107 interests to extend the time limits contained in this paragraph.

NOTE: The purpose of this bill is to increase circumstances where the Department of Human Services is required to seek termination of parental rights. The bill also increases circumstances where the time limit for a respondent parent's improvement period, or combination or extension of the respondent parent's improvement period, applies.

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