

1 **H. B. 2588**

2  
3 (By Delegates Sobonya, Miller, Hamilton, Poore,  
4 Fleischauer, Ellem, Shott, McCuskey, Cowles,  
5 Espinosa and Manchin)  
6

7 [Introduced February 21, 2013; referred to the  
8 Committee on Health and Human Resources then the  
9 Judiciary.]

10 A BILL to amend and reenact §49-2-14 of the Code of West Virginia,  
11 1931, as amended, relating to requiring notification to foster  
12 parents who previously cared for a child that the child has  
13 again been placed in foster care.

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

15 That §49-2-14 of the Code of West Virginia, 1931, as amended,  
16 be amended and reenacted to read as follows:

17 **ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF**  
18 **CHILDREN.**

19 **§49-2-14. Criteria and procedure for removal of child from foster**  
20 **home; notice of child's availability for placement;**  
21 **limitations.**

22 (a) The state department may temporarily remove a child from  
23 a foster home based on an allegation of abuse or neglect, including  
24 sexual abuse, that occurred while the child resided in the home.  
25 If the department determines that reasonable cause exists to

1 support the allegation, the department shall remove all foster  
2 children from the arrangement and preclude contact between the  
3 children and the foster parents. If, after investigation, the  
4 allegation is determined to be true by the department or after a  
5 judicial proceeding a court finds the allegation to be true or if  
6 the foster parents fail to contest the allegation in writing within  
7 twenty calendar days of receiving written notice of said  
8 allegations, the department shall permanently terminate all foster  
9 care arrangements with said foster parents: *Provided*, That if the  
10 state department determines that the abuse occurred due to no act  
11 or failure to act on the part of the foster parents and that  
12 continuation of the foster care arrangement is in the best  
13 interests of the child, the department may, in its discretion,  
14 elect not to terminate the foster care arrangement or arrangements.

15 (b) When a child has been placed in a foster care arrangement  
16 for a period in excess of eighteen consecutive months and the state  
17 department determines that the placement is a fit and proper place  
18 for the child to reside, the foster care arrangement may not be  
19 terminated unless such termination is in the best interest of the  
20 child and:

21 (1) The foster care arrangement is terminated pursuant to  
22 subsection (a) of this section;

23 (2) The foster care arrangement is terminated due to the child  
24 being returned to his or her parent or parents;

1           (3) The foster care arrangement is terminated due to the child  
2 being united or reunited with a sibling or siblings;

3           (4) The foster parent or parents agree to the termination in  
4 writing;

5           (5) The foster care arrangement is terminated at the written  
6 request of a foster child who has attained the age of fourteen; or

7           (6) A circuit court orders the termination upon a finding that  
8 the state department has developed a more suitable long-term  
9 placement for the child upon hearing evidence in a proceeding  
10 brought by the department seeking removal and transfer.

11           (c) When a child has been residing in a foster home for a  
12 period in excess of six consecutive months in total and for a  
13 period in excess of thirty days after the parental rights of the  
14 child's biological parents have been terminated and the foster  
15 parents have not made an application to the department to establish  
16 an intent to adopt the child within thirty days of parental rights  
17 being terminated, the state department may terminate the foster  
18 care arrangement if another, more beneficial, long-term placement  
19 of the child is developed: *Provided*, That if the child is twelve  
20 years of age or older, the child shall be provided the option of  
21 remaining in the existing foster care arrangement if the child so  
22 desires and if continuation of the existing arrangement is in the  
23 best interest of the child.

24           (d) When a child is placed into foster care or becomes

1 eligible for adoption and a sibling or siblings have previously  
2 been placed in foster care or have been adopted, the department  
3 shall notify the foster parents or adoptive parents of the  
4 previously placed or adopted sibling or siblings of the child's  
5 availability for foster care placement or adoption to determine if  
6 the foster parents or adoptive parents are desirous of seeking a  
7 foster care arrangement or adoption of the child. Where a sibling  
8 or siblings have previously been adopted, the department shall also  
9 notify the adoptive parents of a sibling of the child's  
10 availability for foster care placement in that home and a foster  
11 care arrangement entered into to place the child in the home if the  
12 adoptive parents of the sibling are otherwise qualified or can  
13 become qualified to enter into a foster care arrangement with the  
14 department and if such arrangement is in the best interests of the  
15 child: *Provided*, That the department may petition the court to  
16 waive notification to the foster parents or adoptive parents of the  
17 child's siblings. This waiver may be granted, *ex parte*, upon a  
18 showing of compelling circumstances.

19 (e) When a child who was previously placed into foster care,  
20 but left the custody or guardianship of the department, is again  
21 placed into foster care, the department shall notify the foster  
22 parents who most recently cared for the child of the child's  
23 availability for foster care placement to determine if the foster  
24 parents are desirous of seeking a foster care arrangement for the

1 child. The arrangement may only be made if the foster parents are  
2 otherwise qualified or can become qualified to enter into the  
3 foster care arrangement with the department and if such arrangement  
4 is in the best interests of the child: *Provided*, That the  
5 department may petition the court to waive notification to the  
6 foster parents. This waiver may be granted, *ex parte*, upon a  
7 showing of compelling circumstances.

8 ~~(e)~~ (f) When a child is in a foster care arrangement and is  
9 residing separately from a sibling or siblings who are in another  
10 foster home or who have been adopted by another family and the  
11 parents with whom the placed or adopted sibling or siblings reside  
12 have made application to the department to establish an intent to  
13 adopt or to enter into a foster care arrangement regarding a child  
14 so that said child may be united or reunited with a sibling or  
15 siblings, the state department shall upon a determination of the  
16 fitness of the persons and household seeking to enter into a foster  
17 care arrangement or seek an adoption which would unite or reunite  
18 siblings, and if termination and new placement are in the best  
19 interests of the children, terminate the foster care arrangement  
20 and place the child in the household with the sibling or siblings:  
21 *Provided*, That if the department is of the opinion based upon  
22 available evidence that residing in the same home would have a  
23 harmful physical, mental or psychological effect on one or more of  
24 the sibling children or if the child has a physical or mental

1 disability which the existing foster home can better accommodate,  
2 or if the department can document that the reunification of the  
3 siblings would not be in the best interest of one or all of the  
4 children, the state department may petition the circuit court for  
5 an order allowing the separation of the siblings to continue:  
6 *Provided, however,* That if the child is twelve years of age or  
7 older, the state department shall provide the child the option of  
8 remaining in the existing foster care arrangement if remaining is  
9 in the best interests of the child. In any proceeding brought by  
10 the department to maintain separation of siblings, such separation  
11 may be ordered only if the court determines that clear and  
12 convincing evidence supports the department's determination. In  
13 any proceeding brought by the department seeking to maintain  
14 separation of siblings, notice shall be afforded, in addition to  
15 any other persons required by any provision of this code to receive  
16 notice, to the persons seeking to adopt a sibling or siblings of a  
17 previously placed or adopted child and said persons may be parties  
18 to any such action.

19 ~~(f)~~ (g) Where two or more siblings have been placed in  
20 separate foster care arrangements and the foster parents of the  
21 siblings have made application to the department to enter into a  
22 foster care arrangement regarding the sibling or siblings not in  
23 their home or where two or more adoptive parents seek to adopt a  
24 sibling or siblings of a child they have previously adopted, the

1 department's determination as to placing the child in a foster care  
2 arrangement or in an adoptive home shall be based solely upon the  
3 best interests of the siblings.

NOTE: The purpose of this bill is to require notification to foster parents who previously cared for a child that the child has again been placed in foster care and to give the foster parents the first opportunity to foster the child, if they are qualified and the placement is in the best interest of the child.

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