

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 443

BY SENATORS ARVON, AZINGER, CLINE, GAUNCH,
MAYNARD, RUCKER, AND SMITH

[Originating in the Committee on Health and Human
Resources; Reported on February 21, 2018]

1 A BILL to amend and reenact §49-4-605 of the Code of West Virginia, 1931, as amended, relating
2 to requiring the department to file a petition to terminate parental rights when parents have
3 not seen child in 18 months from the removal order; and allowing tolling of 18-month period
4 if parent incarcerated, in rehabilitation facility, or on active military duty and stationed or
5 deployed for an extended time.

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 ~~section~~ code, the department shall file or
2 join in 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; ~~or~~

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 facility, or being on active military
22 duty shall not be considered voluntary behavior.

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

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

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

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