

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 443**

SENATORS ARVON, AZINGER, CLINE, GAUNCH, MAYNARD,

RUCKER, AND SMITH, *original sponsors*

[Passed March 10, 2018; in effect 90 days from passage]



1 AN ACT to amend and reenact §49-4-605 of the Code of West Virginia, 1931, as amended,  
2 relating to requiring the department to file a petition to terminate parental rights when  
3 parents voluntarily fail to have contact or attempt to have contact with the child for a period  
4 of 18 consecutive months; and creating exceptions thereto.

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

**ARTICLE 4. COURT ACTIONS.**

1 **§49-4-605. When department efforts to terminate parental rights are required.**

2 (a) Except as provided in §49-4-605(b) of this code, the department shall file or join in a  
3 petition or otherwise seek a ruling in any pending proceeding to terminate parental rights:

4 (1) If a child has been in foster care for 15 of the most recent 22 months as determined by  
5 the earlier of the date of the first judicial finding that the child is subjected to abuse or neglect or  
6 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  
14 the 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

19 (4) If a parent whose child has been removed from the parent's care, custody, and control  
20 by an order of removal voluntarily fails to have contact or attempt to have contact with the child

21 for a period of 18 consecutive months: *Provided*, That failure to have, or attempt to have, contact  
22 due to being incarcerated, being in a medical or drug treatment or recovery facility, or being on  
23 active military duty shall not be considered voluntary behavior.

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

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

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

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

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

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2018.

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*Governor*