

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4596

BY DELEGATES ISNER, KESSINGER, SUMMERS,
CANESTRARO, IAQUINTA, MOORE, R. MILLER, FOSTER,
SOBONYA AND HOLLEN

[Introduced February 13, 2018; Referred
to the Committee on Prevention and Treatment of
Substance Abuse then the Judiciary.]

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 of Health and Human Resources to file a petition or otherwise
 3 seek a ruling in any pending proceeding to terminate parental rights if an infant has tested
 4 positive for a Schedule I drug.

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 subsection (b) of this section, the department shall file or join in
 2 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, after a referral from a medical professional, the department substantiates that an
 7 infant has had a positive drug screen for a Schedule I substance as defined by §60A-2-204 of this
 8 code;

9 ~~(2)~~ (3) If a court has determined the child is abandoned, tortured, sexually abused or
 10 chronically abused; or

11 ~~(3)~~ (4) If a court has determined the parent has committed murder or voluntary
 12 manslaughter of another of his or her children, another child in the household, or the other parent
 13 of his or her children; has attempted or conspired to commit murder or voluntary manslaughter or
 14 has been an accessory before or after the fact of either crime; has committed unlawful or malicious
 15 wounding resulting in serious bodily injury to the child or to another of his or her children, another
 16 child in the household or to the other parent of his or her children; has committed sexual assault
 17 or sexual abuse of the child, the child's other parent, guardian or custodian, another child of the
 18 parent or any other child residing in the same household or under the temporary or permanent
 19 custody of the parent; or the parental rights of the parent to another child have been terminated

20 involuntarily.

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

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

24 (2) The department has documented in the case plan made available for court review a
25 compelling reason, including, but not limited to, the child's age and preference regarding
26 termination or the child's placement in custody of the department based on any proceedings
27 initiated under §49-4-701 through §49-4-708 of this code, that filing the petition would not be in
28 the best interests of the child; or

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

NOTE: The purpose of this bill is to require the Department of Health and Human Resources to file a petition or otherwise seek a ruling in any pending proceeding to terminate parental rights if an infant has tested positive for a Schedule I drug.

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