

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5063

By Delegates Burkhammer, Pinson, Heckert, Hornby,

Riley, Petitto and W. Hall

[Introduced January 24, 2024; Referred to the
Committee on Senior, Children, and Family Issues
then the Judiciary]

1 A BILL to amend and reenact §49-4-111 of the Code of West Virginia, 1931, as amended, relating
2 to modifying the time to terminate a foster care arrangement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-111. Criteria and procedure for temporary removal of child from foster home; foster care arrangement termination; notice of child's availability for placement; adoption; sibling placements; limitations.

1 (a) The department may temporarily remove a child from a foster home based on an
2 allegation of abuse or neglect, including sexual abuse, that occurred while the child resided in the
3 home. If the department determines that reasonable cause exists to support the allegation, the
4 department shall remove all foster children from the arrangement, preclude contact between the
5 children and the foster parents, provide written notice to the multidisciplinary treatment team
6 members and schedule an emergency team meeting to address placement options. If, after
7 investigation, the allegation is determined to be true by the department or after a judicial
8 proceeding a court finds the allegation to be true or if the foster parents fail to contest the allegation
9 in writing within twenty calendar days of receiving written notice of the allegations, the department
10 shall permanently terminate all foster care arrangements with the foster parents. If the department
11 determines that the abuse occurred due to no act or failure to act on the part of the foster parents
12 and that continuation of the foster care arrangement is in the best interests of the child, the
13 department may, in its discretion, elect not to terminate the foster care arrangement or
14 arrangements.

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

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

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

22 ~~(3) The foster care arrangement is terminated due to the child being united or reunited with~~
23 ~~a sibling or siblings~~

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

25 ~~(5)~~ (4) The foster care arrangement is terminated at the written request of a foster child
26 who has attained the age of fourteen; or

27 ~~(6)~~ (5) A court orders the termination upon a finding that the department has developed a
28 more suitable long-term placement for the child upon hearing evidence in a proceeding brought by
29 the department seeking removal and transfer.

30 (c) When a child has been residing in a foster home for a period in excess of six
31 consecutive months in total and for a period in excess of thirty days after the parental rights of the
32 child's biological parents have been terminated and the foster parents have not made an
33 application to the department to establish an intent to adopt the child within 30 days of parental
34 rights being terminated, the department may terminate the foster care arrangement if another,
35 more beneficial, long-term placement of the child is developed. If the child is 12 years of age or
36 older, the child shall be provided the option of remaining in the existing foster care arrangement if
37 the child so desires and if continuation of the existing arrangement is in the best interest of the
38 child.

39 (d)(1) When a child is placed into foster care ~~or becomes eligible for adoption~~ and a sibling
40 or siblings have previously been placed in foster care or have been adopted, within 10 days the
41 department shall notify the foster parents or adoptive parents of the previously placed or adopted
42 sibling or siblings of the child's availability for foster care placement ~~or adoption~~ to determine if the
43 foster parents or adoptive parents are desirous of seeking a foster care arrangement ~~or adoption~~
44 of the child.

45 (2) Where a sibling or siblings have previously been adopted, the department shall also

46 notify the adoptive parents of a sibling of the child's availability for foster care placement in that
47 home and a foster care arrangement entered into to place the child in the home if the adoptive
48 parents of the sibling are otherwise qualified or can become qualified to enter into a foster care
49 arrangement with the department and if the arrangement is in the best interests of the child.

50 (3) The department may petition the court to waive notification to the foster parents or
51 adoptive parents of the child's siblings. This waiver may be granted, ex parte, upon a showing of
52 compelling circumstances.

53 (e)(1) When a child is in a foster care arrangement and is residing separately from a sibling
54 or siblings who are in another foster home or who have been adopted by another family and the
55 parents with whom the placed or adopted sibling or siblings reside have made application to the
56 department to establish an intent to adopt or to enter into a foster care arrangement regarding a
57 child so that the child may be united or reunited with a sibling or siblings, pursuant to subsection (b)
58 of this section, the department shall may, upon a determination of the fitness of the persons and
59 household seeking to enter into a foster care arrangement or seek an adoption which would unite
60 or reunite siblings, and if termination and new placement are in the best interests of the children,
61 terminate the foster care arrangement and place the child in the household with the sibling or
62 siblings.

63 (2) If the department is of the opinion based upon available evidence that residing in the
64 same home would have a harmful physical, mental or psychological effect on one or more of the
65 sibling children or if the child has a physical or mental disability which the existing foster home can
66 better accommodate, or if the department can document that the reunification of the siblings would
67 not be in the best interest of one or all of the children, the department may petition the circuit court
68 for an order allowing the separation of the siblings to continue.

69 (3) If the child is twelve years of age or older, the department shall provide the child the
70 option of remaining in the existing foster care arrangement if remaining is in the best interests of
71 the child. In any proceeding brought by the department to maintain separation of siblings, the

72 separation may be ordered only if the court determines that clear and convincing evidence
73 supports the department's determination.

74 (4) In any proceeding brought by the department seeking to maintain separation of
75 siblings, notice afforded, in addition to any other persons required by any provision of this code to
76 receive notice, to the persons seeking to adopt a sibling or siblings of a previously placed or
77 adopted child and the persons may be parties to the action.

78 (f) Where two or more siblings have been placed in separate foster care arrangements and
79 the foster parents of the siblings have made application to the department to enter into a foster
80 care arrangement regarding the sibling or siblings not in their home or where two or more adoptive
81 parents seek to adopt a sibling or siblings of a child they have previously adopted, the
82 department's determination as to placing the child in a foster care arrangement or in an adoptive
83 home shall be based solely upon the best interests of the siblings.

NOTE: The purpose of this bill is to modify the time to terminate a foster care arrangement.

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