

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5409

By Delegates Heckert, Zatezalo, Kimble, Mazzocchi,
DeVault, Sheedy, Crouse, Hornby, Hite, Householder,
and Fehrenbacher

[Introduced February 01, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-605 and §49-4-610 of the Code of West Virginia, 1931, as
 2 amended, all relating to limiting the number of improvement periods a parent may have per
 3 child or actions in abuse and neglect proceedings.

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 code, the department shall file or join in a
 2 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 the
 5 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;

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 the
 13 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 for
 20 a period of 18 consecutive months: *Provided*, That failure to have, or attempt to have, contact due

21 to being incarcerated, being in a medical or drug treatment or recovery facility, or being on active
22 military duty shall not be considered voluntary behavior; or

23 (5) If a parent has failed to successfully complete the final improvement period he or she
24 may be granted in that proceeding under §49-4-610 of this code.

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

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

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

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

**§49-4-610. Improvement periods in cases of child neglect or abuse; findings; orders;
extensions; hearings; time limits.**

1 In any proceeding brought pursuant to this article, the court may grant any respondent an
2 improvement period in accord with this article. During the period, the court may require temporary
3 custody with a responsible person which has been found to be a fit and proper person for the
4 temporary custody of the child or children or the state department or other agency during the
5 improvement period. An order granting an improvement period shall require the department to
6 prepare and submit to the court a family case plan in accordance with section four hundred eight,
7 of this article. The types of improvement periods are as follows:

8 (1) *Preadjudicatory improvement period.* -- A court may grant a respondent an
9 improvement period of a period not to exceed three months prior to making a finding that a child is

10 abused or neglected pursuant to section six hundred one of this article only when:

11 (A) The respondent files a written motion requesting the improvement period;

12 (B) The respondent demonstrates, by clear and convincing evidence, that the respondent
13 is likely to fully participate in the improvement period and the court further makes a finding, on the
14 record, of the terms of the improvement period;

15 (C) In the order granting the improvement period, the court:

16 (i) Orders that a hearing be held to review the matter within sixty days of the granting of the
17 improvement period; or

18 (ii) Orders that a hearing be held to review the matter within ninety days of the granting of
19 the improvement period and that the department submit a report as to the respondents progress in
20 the improvement period within sixty days of the order granting the improvement period; and

21 (D) The order granting the improvement period requires the department to prepare and
22 submit to the court an individualized family case plan in accordance with section four hundred
23 eight of this article;

24 (2) *Post-adjudicatory improvement period.* -- After finding that a child is an abused or
25 neglected child pursuant to §49-4-601, a court may grant a respondent an improvement period of
26 a period not to exceed six months when:

27 (A) The respondent files a written motion requesting the improvement period;

28 (B) The respondent demonstrates, by clear and convincing evidence, that the respondent
29 is likely to fully participate in the improvement period and the court further makes a finding, on the
30 record, of the terms of the improvement period;

31 (C) In the order granting the improvement period, the court:

32 (i) orders that a hearing be held to review the matter within thirty days of the granting of the
33 improvement period; or

34 (ii) orders that a hearing be held to review the matter within ninety days of the granting of
35 the improvement period and that the department submit a report as to the respondent's progress in

36 the improvement period within sixty days of the order granting the improvement period;

37 (D) Since the initiation of the proceeding, the respondent has not previously been granted
38 any improvement period or the respondent demonstrates that since the initial improvement period,
39 the respondent has experienced a substantial change in circumstances. Further, the respondent
40 shall demonstrate that due to that change in circumstances the respondent is likely to fully
41 participate in a further improvement period; and

42 (E) The order granting the improvement period requires the department to prepare and
43 submit to the court an individualized family case plan in accordance with section four hundred
44 eight of this article.

45 (3) *Post-dispositional improvement period.* – The court may grant an improvement period
46 not to exceed six months as a disposition pursuant to section six hundred four of this article when:

47 (A) The respondent moves in writing for the improvement period;

48 (B) The respondent demonstrates, by clear and convincing evidence, that the respondent
49 is likely to fully participate in the improvement period and the court further makes a finding, on the
50 record, of the terms of the improvement period;

51 (C) In the order granting the improvement period, the court:

52 (i) Orders that a hearing be held to review the matter within sixty days of the granting of the
53 improvement period; or

54 (ii) Orders that a hearing be held to review the matter within ninety days of the granting of
55 the improvement period and that the department submit a report as to the respondent's progress in
56 the improvement period within sixty days of the order granting the improvement period;

57 (D) Since the initiation of the proceeding, the respondent has not previously been granted
58 any improvement period or the respondent demonstrates that since the initial improvement period,
59 the respondent has experienced a substantial change in circumstances. Further, the respondent
60 shall demonstrate that due to that change in circumstances, the respondent is likely to fully
61 participate in the improvement period; and

62 (E) The order granting the improvement period shall require the department to prepare and
63 submit to the court an individualized family case plan in accordance with section four hundred
64 eight of this article.

65 (4) *Responsibilities of the respondent receiving improvement period.* --

66 (A) When any improvement period is granted to a respondent pursuant to this section, the
67 respondent shall be responsible for the initiation and completion of all terms of the improvement
68 period. The court may order the state department to pay expenses associated with the services
69 provided during the improvement period when the respondent has demonstrated that he or she is
70 unable to bear the expenses.

71 (B) When any improvement period is granted to a respondent pursuant to this section, the
72 respondent shall execute a release of all medical information regarding that respondent, including,
73 but not limited to, information provided by mental health and substance abuse professionals and
74 facilities. The release shall be accepted by a professional or facility regardless of whether the
75 release conforms to any standard required by that facility.

76 (5) *Responsibilities of the department during improvement period.* -- When any respondent
77 is granted an improvement period pursuant to this article, the department shall monitor the
78 progress of the person in the improvement period. This section may not be construed to prohibit a
79 court from ordering a respondent to participate in services designed to reunify a family or to relieve
80 the department of any duty to make reasonable efforts to reunify a family required by state or
81 federal law.

82 (6) *Extension of improvement period.* -- A court may extend any improvement period
83 granted pursuant to subdivision (2) or (3) of this section for a period not to exceed three months
84 when the court finds that the respondent has substantially complied with the terms of the
85 improvement period; that the continuation of the improvement period will not substantially impair
86 the ability of the department to permanently place the child; and that the extension is otherwise
87 consistent with the best interest of the child.

88 (7) *Termination of improvement period.* -- Upon the motion by any party, the court shall
89 terminate any improvement period granted pursuant to this section when the court finds that
90 respondent has failed to fully participate in the terms of the improvement period or has satisfied the
91 terms of the improvement period to correct any behavior alleged in the petition or amended
92 petition to make his or her child unsafe.

93 (8) *Hearings on improvement period.* --

94 (A) Any hearing scheduled pursuant to this section may be continued only for good cause
95 upon a written motion properly served on all parties. When a court grants a continuance, the court
96 shall enter an order granting the continuance specifying a future date when the hearing will be
97 held.

98 (B) Any hearing to be held at the end of an improvement period shall be held as nearly as
99 practicable on successive days and shall be held as close in time as possible after the end of the
100 improvement period and shall be held no later than thirty days of the termination of the
101 improvement period.

102 (9) *Time limit for improvement periods.* -- Notwithstanding any other provision of this
103 section, no combination of any improvement periods or extensions thereto may cause a child to be
104 in foster care more than fifteen months of the most recent twenty-two months, unless the court
105 finds compelling circumstances by clear and convincing evidence that it is in the child's best
106 interests to extend the time limits contained in this paragraph.

107 (10) Under no circumstances shall a respondent be granted improvement periods in more
108 than three filings based on petitions filed by the department or that the department has joined for
109 the same child or children.

110 (11) In the event that a petition is filed against a respondent who has one prior termination
111 of parental rights, he or she shall not be granted more than two improvement periods, whether
112 preadjudicatory or postadjudicatory, for any child born to that respondent after his or her
113 termination of parental rights.

114 (12) In the event that a petition is filed against a respondent who has had two or more prior
115 terminations of parental rights in separate proceedings, or one termination of parental rights with
116 one or more relinquishments of parental rights in the face of termination in separate proceedings,
117 he or she shall not be granted more than one improvement period, whether preadjudicatory or
118 postadjudicatory, for any child born to that parent after his or her terminations or termination of
119 parental rights and relinquishment of parental rights in the face of termination.

NOTE: The purpose of this bill is to limit the number of improvement periods a parent may have per child or actions in abuse and neglect proceedings.

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