

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

## **House Bill 2369**

By Delegates Heckert, T. Clark, DeVault, Jennings,

Drennan, and Crouse

[Introduced February 13, 2025; 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

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

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

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

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

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

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

In any proceeding brought pursuant to this article, the court may grant any respondent an improvement period in accord with this article. During the period, the court may require temporary custody with a responsible person which has been found to be a fit and proper person for the temporary custody of the child or children or the state department or other agency during the improvement period. An order granting an improvement period shall require the department to prepare and submit to the court a family case plan in accordance with §49-4-408 of this code. The types of improvement periods are as follows:

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

abused or neglected pursuant to §49-4-601 of this code only when:

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

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

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

(i) Orders that a hearing be held to review the matter within 60 days of the granting of the improvement period; or

(ii) Orders that a hearing be held to review the matter within 90 days of the granting of the improvement period and that the department submit a report as to the respondents progress in the improvement period within 60 days of the order granting the improvement period; and

(D) The order granting the improvement period requires the department to prepare and submit to the court an individualized family case plan in accordance with §49-4-408 of this code;

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

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

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

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

(i) Orders that a hearing be held to review the matter within 30 days of the granting of the improvement period; or

(ii) Orders that a hearing be held to review the matter within 90 days of the granting of the improvement period and that the department submit a report as to the respondent's progress in the improvement period within 60 days of the order granting the improvement period;

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

(E) The order granting the improvement period requires the department to prepare and submit to the court an individualized family case plan in accordance with §49-4-408 of this code.

(3) *Post-dispositional improvement period.* – The court may grant an improvement period not to exceed six months as a disposition pursuant to §49-4-604 of this code when:

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

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

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

(i) Orders that a hearing be held to review the matter within 60 days of the granting of the improvement period; or

(ii) Orders that a hearing be held to review the matter within 90 days of the granting of the improvement period and that the department submit a report as to the respondent's progress in the improvement period within 60 days of the order granting the improvement period;

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

(E) The order granting the improvement period shall require the department to prepare and submit to the court an individualized family case plan in accordance with §49-4-408 of this code.

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

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

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

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

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

85           (7) *Termination of improvement period.* -- Upon the motion by any party, the court shall  
86 terminate any improvement period granted pursuant to this section when the court finds that  
87 respondent has failed to fully participate in the terms of the improvement period or has satisfied the

terms of the improvement period to correct any behavior alleged in the petition or amended petition to make his or her child unsafe.

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

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

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

*(9) Time limit for improvement periods. --* Notwithstanding any other provision of this section, no combination of any improvement periods or extensions thereto may cause a child to be in foster care more than 15 months of the most recent 22 months, unless the court finds compelling circumstances by clear and convincing evidence that it is in the child's best interests to extend the time limits contained in this paragraph.

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

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

(12) In the event that a petition is filed against a respondent who has had two or more prior terminations of parental rights in separate proceedings, or one termination of parental rights with one or more relinquishments of parental rights in the face of termination in separate proceedings,

114 he or she shall not be granted more than one improvement period, whether preadjudicatory or  
115 postadjudicatory, for any child born to that parent after his or her terminations or termination of  
116 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.