

# WEST VIRGINIA CODE: §49-4-111

## **§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.**

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

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

- (1) The foster care arrangement is terminated pursuant to subsection (a) of this section;
- (2) The foster care arrangement is terminated due to the child being returned to his or her parent or parents;
- (3) The foster care arrangement is terminated due to the child being united or reunited with a sibling or siblings;
- (4) The foster parent or parents agree to the termination in writing;
- (5) The foster care arrangement is terminated at the written request of a foster child who has attained the age of fourteen; or
- (6) A court orders the termination upon a finding that the department has developed a more suitable long-term placement for the child upon hearing evidence in a proceeding brought by the department seeking removal and transfer.

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

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

(2) Where a sibling or siblings have previously been adopted, the department shall also notify the adoptive parents of a sibling of the child's availability for foster care placement in that home and a foster care arrangement entered into to place the child in the home if the adoptive parents of the sibling are otherwise qualified or can become qualified to enter into a foster care arrangement with the department and if the arrangement is in the best interests of the child.

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

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

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

to continue.

(3) If the child is twelve years of age or older, the department shall provide the child the option of remaining in the existing foster care arrangement if remaining is in the best interests of the child. In any proceeding brought by the department to maintain separation of siblings, the separation may be ordered only if the court determines that clear and convincing evidence supports the department's determination.

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

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