

SB 1004

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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1994

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## ENROLLED

SENATE BILL NO. 1004

(By Senator Burdette, Mr. President, et al)

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PASSED March 15, 1994  
In Effect from Passage

**E N R O L L E D**

**Senate Bill No. 1004**

(BY SENATORS BURDETTE, MR. PRESIDENT,  
WALKER, LUCHT AND BAILEY)

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[Passed March 15, 1994; in effect from passage.]

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AN ACT to amend and reenact section three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen, article two of said chapter, all relating to children in foster care; defining "siblings"; creating guidelines by which siblings who have been separated may be united or reunited in foster homes or adoptive homes; removal of foster children; procedures; judicial review; and rights of foster parents, adoptive parents, foster children and adopted children.

*Be it enacted by the Legislature of West Virginia:*

That section three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section fourteen, article two of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 1. PURPOSES; DEFINITIONS.**

**§49-1-3. Definitions relating to abuse and neglect.**

1 (a) "Abused child" means a child whose health or  
2 welfare is harmed or threatened by:

3 (1) A parent, guardian or custodian who knowingly or  
4 intentionally inflicts, attempts to inflict or knowingly  
5 allows another person to inflict, physical injury or  
6 mental or emotional injury upon the child or another  
7 child in the home; or

8 (2) Sexual abuse or sexual exploitation; or

9 (3) The sale or attempted sale of a child by a parent,  
10 guardian or custodian in violation of section sixteen,  
11 article four, chapter forty-eight of this code.

12 In addition to its broader meaning, physical injury may  
13 include an injury to the child as a result of excessive  
14 corporal punishment.

15 (b) "Abusing parent" means a parent, guardian or  
16 other custodian, regardless of his or her age, whose  
17 conduct, as alleged in the petition charging child abuse  
18 or neglect, has been adjudged by the court to constitute  
19 child abuse or neglect.

20 (c) "Child abuse and neglect" or "child abuse or  
21 neglect" means physical injury, mental or emotional  
22 injury, sexual abuse, sexual exploitation, sale or  
23 attempted sale or negligent treatment or maltreatment of  
24 a child by a parent, guardian or custodian who is  
25 responsible for the child's welfare, under circumstances  
26 which harm or threaten the health and welfare of the  
27 child.

28 (d) "Child abuse and neglect services" means social  
29 services which are directed toward:

30 (1) Protecting and promoting the welfare of children  
31 who are abused or neglected;

32 (2) Identifying, preventing and remedying conditions  
33 which cause child abuse and neglect;

34 (3) Preventing the unnecessary removal of children  
35 from their families by identifying family problems and

36 assisting families in resolving problems which could lead  
37 to a removal of children and a breakup of the family;

38 (4) In cases where children have been removed from  
39 their families, providing services to the children and the  
40 families so as to restore such children to their families;

41 (5) Placing children in suitable adoptive homes when  
42 restoring the children to their families is not possible or  
43 appropriate; and

44 (6) Assuring the adequate care of children away from  
45 their families when the children have been placed in the  
46 custody of the department or third parties.

47 (e) "Imminent danger to the physical well-being of the  
48 child" means an emergency situation in which the  
49 welfare or the life of the child is threatened. Such  
50 emergency situation exists when there is reasonable  
51 cause to believe that any child in the home is or has been  
52 sexually abused or sexually exploited, or reasonable  
53 cause to believe that the following conditions threaten  
54 the health or life of any child in the home:

55 (1) Nonaccidental trauma inflicted by a parent,  
56 guardian, custodian, sibling or a babysitter or other  
57 caretaker; or

58 (2) A combination of physical and other signs indicat-  
59 ing a pattern of abuse which may be medically diagnosed  
60 as battered child syndrome; or

61 (3) Nutritional deprivation; or

62 (4) Abandonment by the parent, guardian or custodian;  
63 or

64 (5) Inadequate treatment of serious illness or disease;  
65 or

66 (6) Mental or emotional injury inflicted by a parent,  
67 guardian or custodian; or

68 (7) Sale or attempted sale of the child by the parent,  
69 guardian or custodian.

70 (f) "Multidisciplinary team" means a group of  
71 professionals and paraprofessionals representing a  
72 variety of disciplines who interact and coordinate their  
73 efforts to identify, diagnose and treat specific cases of  
74 child abuse and neglect. Multidisciplinary teams may  
75 include, but are not limited to, medical, child care and  
76 law-enforcement personnel, social workers, psycholo-  
77 gists and psychiatrists. Their goal is to pool their  
78 respective skills in order to formulate accurate diagnoses  
79 and to provide comprehensive coordinated treatment  
80 with continuity and follow-up for both parents and  
81 children. "Community team" means a multidisciplinary  
82 group which addresses the general problem of child  
83 abuse and neglect in a given community and may consist  
84 of several multidisciplinary teams with different  
85 functions.

86 (g) (1) "Neglected child" means a child:

87 (A) Whose physical or mental health is harmed or  
88 threatened by a present refusal, failure or inability of the  
89 child's parent, guardian or custodian to supply the child  
90 with necessary food, clothing, shelter, supervision,  
91 medical care or education, when such refusal, failure or  
92 inability is not due primarily to a lack of financial means  
93 on the part of the parent, guardian or custodian; or

94 (B) Who is presently without necessary food, clothing,  
95 shelter, medical care, education or supervision because  
96 of the disappearance or absence of the child's parent or  
97 custodian;

98 (2) "Neglected child" does not mean a child whose  
99 education is conducted within the provisions of section  
100 one, article eight, chapter eighteen of this code.

101 (h) "Parenting skills" means a parent's competencies in  
102 providing physical care, protection, supervision and  
103 psychological support appropriate to a child's age and  
104 state of development.

105 (i) "Sexual abuse" means:

106 (A) As to a child who is less than sixteen years of age,  
107 any of the following acts which a parent, guardian or  
108 custodian shall engage in, attempt to engage in, or  
109 knowingly procure another person to engage in, with  
110 such child, notwithstanding the fact that the child may  
111 have willingly participated in such conduct or the fact  
112 that the child may have suffered no apparent physical  
113 injury or mental or emotional injury as a result of such  
114 conduct:

115 (i) Sexual intercourse; or

116 (ii) Sexual intrusion; or

117 (iii) Sexual contact; or

118 (B) As to a child who is sixteen years of age or older,  
119 any of the following acts which a parent, guardian or  
120 custodian shall engage in, attempt to engage in, or  
121 knowingly procure another person to engage in, with  
122 such child, notwithstanding the fact that the child may  
123 have consented to such conduct or the fact that the child  
124 may have suffered no apparent physical injury or mental  
125 or emotional injury as a result of such conduct:

126 (i) Sexual intercourse; or

127 (ii) Sexual intrusion; or

128 (iii) Sexual contact; or

129 (C) Any conduct whereby a parent, guardian or  
130 custodian displays his or her sex organs to a child, or  
131 procures another person to display his or her sex organs  
132 to a child, for the purpose of gratifying the sexual desire  
133 of the parent, guardian or custodian, of the person  
134 making such display, or of the child, or for the purpose  
135 of affronting or alarming the child.

136 (j) "Sexual contact" means sexual contact as that term  
137 is defined in section one, article eight-b, chapter sixty-  
138 one of this code.

139 (k) "Sexual exploitation" means an act whereby:

140 (1) A parent, custodian or guardian, whether for  
141 financial gain or not, persuades, induces, entices or  
142 coerces a child to engage in sexually explicit conduct as  
143 that term is defined in section one, article eight-c,  
144 chapter sixty-one of this code;

145 (2) A parent, guardian or custodian persuades, induces,  
146 entices or coerces a child to display his or her sex organs  
147 for the sexual gratification of the parent, guardian,  
148 custodian or a third person, or to display his or her sex  
149 organs under circumstances in which the parent,  
150 guardian or custodian knows such display is likely to be  
151 observed by others who would be affronted or alarmed.

152 (l) "Sexual intercourse" means sexual intercourse as  
153 that term is defined in section one, article eight-b,  
154 chapter sixty-one of this code.

155 (m) "Sexual intrusion" means sexual intrusion as that  
156 term is defined in section one, article eight-b, chapter  
157 sixty-one of this code.

158 (n) "Parental rights" means any and all rights and  
159 duties regarding a parent to a minor child, including, but  
160 not limited to, custodial rights and visitational rights  
161 and rights to participate in the decisions affecting a  
162 minor child.

163 (o) "Placement" means any temporary or permanent  
164 placement of a child who is in the custody of the state in  
165 any foster home, group home or other facility or  
166 residence.

167 (p) "Siblings" means children who have at least one  
168 biological parent in common or who have been legally  
169 adopted by the same parents or parent.

**ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE  
OF CHILDREN.**

**§49-2-14. Criteria and procedure for removal of child from  
foster home; notice of child's availability for  
placement; limitations.**

1 (a) The state department may temporarily remove a

2 child from a foster home based on an allegation of abuse  
3 or neglect, including sexual abuse, that occurred while  
4 the child resided in the home. If the department  
5 determines that reasonable cause exists to support the  
6 allegation, the department shall remove all foster  
7 children from the arrangement and preclude contact  
8 between the children and the foster parents. If, after  
9 investigation, the allegation is determined to be true by  
10 the department or after a judicial proceeding a court  
11 finds the allegation to be true or if the foster parents fail  
12 to contest the allegation in writing within twenty  
13 calendar days of receiving written notice of said  
14 allegations, the department shall permanently terminate  
15 all foster care arrangements with said foster parents:  
16 *Provided*, That if the state department determines that  
17 the abuse occurred due to no act or failure to act on the  
18 part of the foster parents, and that continuation of the  
19 foster care arrangement is in the best interests of the  
20 child, the department may, in its discretion, elect not to  
21 terminate the foster care arrangement or arrangements.

22 (b) When a child has been placed in a foster care  
23 arrangement for a period in excess of eighteen consecu-  
24 tive months and the state department determines that  
25 the placement is a fit and proper place for the child to  
26 reside, the foster care arrangement may not be termi-  
27 nated unless such termination is in the best interest of  
28 the child and:

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

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

33 (3) The foster care arrangement is terminated due to  
34 the child being united or reunited with a sibling or  
35 siblings;

36 (4) The foster parent or parents agree to the termina-  
37 tion in writing;

38 (5) The foster care arrangement is terminated at the



39 written request of a foster child who has attained the age  
40 of fourteen; or

41 (6) A circuit court orders the termination upon a  
42 finding that the state department has developed a more  
43 suitable long-term placement for the child upon hearing  
44 evidence in a proceeding brought by the department  
45 seeking removal and transfer.

46 (c) When a child has been residing in a foster home for  
47 a period in excess of six consecutive months in total and  
48 for a period in excess of thirty days after the parental  
49 rights of the child's biological parents have been  
50 terminated and the foster parents have not made an  
51 application to the department to establish an intent to  
52 adopt the child, the state department may terminate the  
53 foster care arrangement if another, more beneficial,  
54 long-term placement of the child is developed: *Provided,*  
55 That if the child is twelve years of age or older, the child  
56 shall be provided the option of remaining in the existing  
57 foster care arrangement if the child so desires and if  
58 continuation of the existing arrangement is in the best  
59 interest of the child.

60 (d) When a child is placed into foster care or becomes  
61 eligible for adoption and a sibling or siblings have  
62 previously been placed in foster care or have been  
63 adopted, the department shall notify the foster parents  
64 or adoptive parents of the previously placed or adopted  
65 sibling or siblings of the child's availability for foster  
66 care placement or adoption to determine if the foster  
67 parents or adoptive parents are desirous of seeking a  
68 foster care arrangement or adoption of the child. Where  
69 a sibling or siblings have previously been adopted, the  
70 department shall also notify the adoptive parents of a  
71 sibling of the child's availability for foster care  
72 placement in that home and a foster care arrangement  
73 entered into to place the child in the home if the  
74 adoptive parents of the sibling are otherwise qualified or  
75 can become qualified to enter into a foster care arrange-  
76 ment with the department and if such arrangement is in

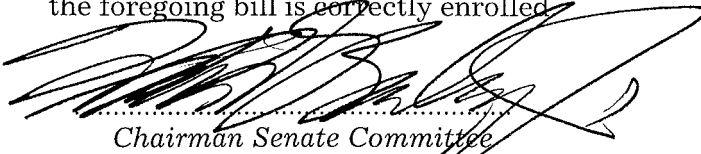
77 the best interests of the child.

78 (e) When a child is in a foster care arrangement and is  
79 residing separately from a sibling or siblings who are in  
80 another foster home or who have been adopted by  
81 another family and the parents with whom the placed or  
82 adopted sibling or siblings reside have made application  
83 to the department to establish an intent to adopt or to  
84 enter into a foster care arrangement regarding a child so  
85 that said child may be united or reunited with a sibling  
86 or siblings, the state department shall upon a determina-  
87 tion of the fitness of the persons and household seeking  
88 to enter into a foster care arrangement or seek an  
89 adoption which would unite or reunite siblings, and if  
90 termination and new placement are in the best interests  
91 of the children, terminate the foster care arrangement  
92 and place the child in the household with the sibling or  
93 siblings: *Provided*, That if the department is of the  
94 opinion based upon available evidence that residing in  
95 the same home would have a harmful physical, mental or  
96 psychological effect on one or more of the sibling  
97 children or if the child has a physical or mental  
98 disability which the existing foster home can better  
99 accommodate, or if the department can document that  
100 the reunification of the siblings would not be in the best  
101 interest of one or all of the children, the state depart-  
102 ment may petition the circuit court for an order allowing  
103 the separation of the siblings to continue: *Provided*,  
104 *however*, That if the child is twelve years of age or older,  
105 the state department shall provide the child the option of  
106 remaining in the existing foster care arrangement if  
107 remaining is in the best interests of the child. In any  
108 proceeding brought by the department to maintain  
109 separation of siblings, such separation may be ordered  
110 only if the court determines that clear and convincing  
111 evidence supports the department's determination. In  
112 any proceeding brought by the department seeking to  
113 maintain separation of siblings, notice shall be afforded,  
114 in addition to any other persons required by any  
115 provision of this code to receive notice, to the persons

116 seeking to adopt a sibling or siblings of a previously  
117 placed or adopted child and said persons may be parties  
118 to any such action.

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

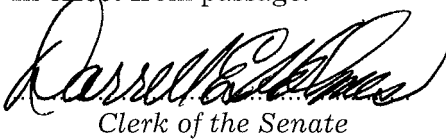
That Joint Committee on Enrolled Bills hereby certifies that  
the foregoing bill is correctly enrolled

  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

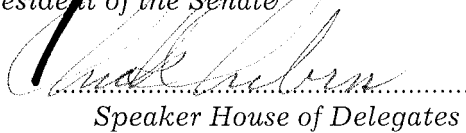
Originated in the Senate.

In effect from passage.

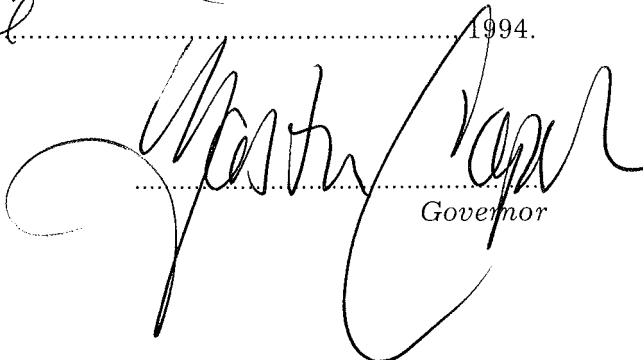
  
.....  
Clerk of the Senate

  
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Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved this the 1st  
day of April ..... 1994.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/3/94

Time

9:27am