

SB 133

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

SENATE BILL NO. 733

(By Senator Wooten, et al)



PASSED March 8, 2002

In Effect 90 days from **Passage**

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Senate Bill No. 733

(BY SENATORS WOOTON, HUNTER, MINARD, ROSS AND ROWE)

[Passed March 8, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact section fourteen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the criteria and procedure for removal of a child from a foster home; and establishing time period for termination of foster care arrangements subsequent to termination of parental rights.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

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

34 (4) The foster parent or parents agree to the termination
35 in writing;

36 (5) The foster care arrangement is terminated at the
37 written request of a foster child who has attained the age
38 of fourteen; or

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

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

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

73 ment with the department and if such arrangement is in
74 the best interests of the child: *Provided*, That the depart-
75 ment may petition the court to waive notification to the
76 foster parents or adoptive parents of the child's siblings.
77 This waiver may be granted, *ex parte*, upon a showing of
78 compelling circumstances.

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

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

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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

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.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within is approved this the 3rd
Day of April 2002.

[Handwritten Signature]
.....
Governor

FORM 10-10-10

DATE

3/25/02

11:40am