

SB 557 5

FILED

2007 APR -4 PM 3: 55

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 557

(By Senators Prezioso, Bailey, Edgell, Foster,
Helmick, Hunter, Kessler, Unger,
Barnes, Boley, Guills and Yoder)

[Passed March 9, 2007; in effect from passage.]

FILED

2007 APR -4 PM 3: 55

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 557

(By Senators Prezioso, Bailey, Edgell, Foster, Helmick,
Hunter, Kessler, Unger, Barnes, Boley, Guills and Yoder)

[Passed March 9, 2007; in effect from passage.]

AN ACT to amend and reenact §49-5-21 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-6-5a and §49-6-8 of said code, all relating to judicial review of juvenile proceedings; requiring court to make finding whether department made reasonable efforts to finalize a permanency plan; requiring judicial review at least quarterly; permanency hearings when a court determines reasonable efforts to preserve families are not required; foster care review; and annual reports to the court.

Be it enacted by the Legislature of West Virginia:

That §49-5-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-6-5a and §49-6-8 of said code be amended and reenacted, all to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-21. Quarterly judicial review of juvenile proceedings.

1 For cases under this article in which the provisions of
2 section three, article five-d of this chapter apply, the
3 court wherein the juvenile proceeding is pending shall
4 conduct regular judicial review of the case with the
5 multidisciplinary treatment team and a juvenile
6 probation officer in attendance. Such judicial review
7 may be conducted as often as is considered necessary by
8 the court, but shall be conducted at least once every
9 three calendar months as long as the child remains in
10 the legal or physical custody of the state.

11 In conducting the judicial review required by this
12 section, the court shall address the extent of progress in
13 the case, treatment and service needs, permanent
14 placement planning for the juvenile, any uncontested
15 issues and any other matters that the court considers
16 pertinent. An order reflecting the matters considered,
17 any uncontested rulings and the scheduling of an
18 evidentiary hearing on any contested issue shall be
19 issued by the court within ten judicial days of the
20 judicial review. At the conclusion of each judicial
21 review hearing, the court shall enter an order stating
22 whether or not the department made reasonable efforts
23 to finalize the permanency plan.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**§49-6-5a. Permanency hearing when court determines reasonable efforts to preserve families not required.**

1 (a) If the court finds, pursuant to the provisions of
2 subdivision (7), subsection (a), section five of this article
3 that the department is not required to make reasonable
4 efforts to preserve the family, then, notwithstanding
5 any other provision, a permanency hearing must be held
6 within thirty days following the entry of the court order
7 so finding and must be conducted at least once every
8 three calendar months thereafter until a permanent
9 placement is achieved.

10 (b) The purpose of the permanency hearing is to
11 determine the permanency plan for the child that
12 includes: (1) When the child will be returned to the
13 parent; (2) when the child will be placed for adoption, in
14 which event the state will file a petition for termination
15 of parental rights; or (3) when the child will be referred
16 for legal guardianship. In cases where the department
17 has demonstrated a compelling reason for determining
18 it would not be in the best interests of the child to
19 return home, the court shall determine whether the
20 child should be referred for termination of parental
21 rights, be placed for adoption, be placed with a fit and
22 willing relative, be placed with a legal guardian or
23 placed in another planned permanent living
24 arrangement. At the conclusion of each permanency
25 hearing, the court must enter an order stating whether
26 or not the department made reasonable efforts to
27 finalize the permanency plan.

28 (c) Any foster parent, preadoptive parent or relative

29 providing care for the child shall be given notice of and
30 the opportunity to be heard at the permanency hearing
31 provided in this section.

§49-6-8. Foster care review; annual reports to the court.

1 (a) If, twelve months after receipt by the department
2 or its authorized agent of physical custody of a child
3 either by a court ordered placement or by a voluntary
4 agreement, the department has not placed a child in an
5 adoptive home or placed the child with a natural parent
6 or placed the child in legal guardianship or permanently
7 placed the child with a fit and willing relative, the
8 department shall file with the court a petition for
9 review of the case. The department shall also file with
10 the court a report detailing the efforts that have been
11 made to place the child in a permanent home and copies
12 of the child's case plan, including the permanency plan
13 as defined in section five, article six of this chapter.
14 Copies of the report shall be sent to the child's attorney
15 and be made available to the child's parent(s) or
16 guardian. The court shall schedule a hearing in
17 chambers, giving notice and the right to be present to:
18 The child's attorney; the child, if twelve years of age or
19 older; the child's parents; the child's guardians; the
20 child's foster parents; any preadoptive parent or any
21 relative providing care for the child; and such other
22 persons as the court may, in its discretion, direct. The
23 child's presence may be waived by the child's attorney
24 at the request of the child or if the child would suffer
25 emotional harm. The purpose of the hearing is to
26 review the child's case, to determine whether and under
27 what conditions the child's commitment to the
28 department shall continue and to determine what
29 efforts are necessary to provide the child with a

30 permanent home. At the conclusion of the hearing the
31 court shall, in accordance with the best interests of the
32 child, enter an appropriate order of disposition. The
33 court order shall state: (1) Whether or not the
34 department made reasonable efforts to preserve the
35 family and to prevent out-of-home placement or that
36 the specific situation made such effort unreasonable; (2)
37 whether or not the department made reasonable efforts
38 to finalize the permanency plan for the child; and (3)
39 identify services required to meet the child's needs:
40 *Provided*, That the department is not required to make
41 reasonable efforts to preserve the family if the court
42 determines any of the conditions set forth in subdivision
43 (7), subsection (a), section five of this article exist. The
44 court shall possess continuing jurisdiction over cases
45 reviewed under this section for so long as a child
46 remains in temporary foster care or, when a child is
47 returned to his or her natural parents subject to
48 conditions imposed by the court, for so long as the
49 conditions are effective.

50 (b) The state department shall file a supplementary
51 petition for review with the court within twelve months
52 and every twelve months thereafter for every child that
53 remains in the physical or legal custody of the state
54 department until the child is placed in an adoptive
55 home or returned to his or her parents or placed in legal
56 guardianship or permanently placed with a fit and
57 willing relative.

58 (c) The state department shall annually report to the
59 court the current status of the placements of children in
60 permanent care and custody of the state department
61 who have not been adopted.

62 (d) The state department shall file a report with the
63 court in any case where any child in the temporary or
64 permanent custody of the state receives more than three
65 placements in one year no later than thirty days after
66 the third placement. This report shall be provided to all
67 parties and their counsel. Upon motion by any party,
68 the court shall review these placements and determine
69 what efforts are necessary to provide the child with a
70 stable foster or temporary home: *Provided*, That no
71 report shall be provided to any parent or parent's
72 attorney whose parental rights have been terminated
73 pursuant to this article.

74 (e) The state department shall notify, in writing, the
75 court, the child, if over the age of twelve, the child's
76 attorney, the parents and the parents' attorney forty-
77 eight hours prior to the move if this is a planned move,
78 or within forty-eight hours of the next business day
79 after the move if this is an emergency move, except
80 where such notification would endanger the child or the
81 foster family. This notice shall not be required in any
82 case where the child is in imminent danger in the child's
83 current placement. The location of the child need not
84 be disclosed, but the purpose of the move should be.
85 This requirement is not waived by placement of the
86 child in a home or other residence maintained by a
87 private provider. No notice shall be provided pursuant
88 to this provision to any parent or parent's attorney
89 whose parental rights have been terminated pursuant to
90 this article.

91 (f) Nothing in this article precludes any party from
92 petitioning the court for review of the child's case at any
93 time. The court shall grant such petition upon a
94 showing that there is a change in circumstance or needs

95 of the child that warrants court review.

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

Clawhite
.....
Chairman Senate Committee

JL
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Parrell Holmes
.....
Clerk of the Senate

Bryce W. Sawyer
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Robert R. Corcoran
.....
Speaker House of Delegates

The within *is approved* this
the *4th* Day of *April* 2007.

Paul H. Raabe
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 03 2007

Time 1:40 pm