

SB 557 5

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2007**

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**ENROLLED**

**Senate Bill No. 557**

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

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

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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. Boy*  
.....  
Clerk of the House of Delegates

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

*RD*  
.....  
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