

Healthy Grandfamilies Legal Information

PROVIDED BY LEGAL AID OF WEST VIRGINIA



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This booklet is being provided as part of the Healthy Grandfamilies program. This booklet is provided for information purposes only by Legal Aid of West Virginia. Legal Aid does not warrant this information for any purpose. This booklet should not be considered legal advice. It does not create an attorney-client relationship. These materials are accurate legal information as of April of 2018. However, laws can change because new laws are passed in the West Virginia legislature every year. Also, laws can be affected by developments in court cases at any time.

If you are not a lawyer, you should contact Legal Aid of West Virginia at 1-866-255-4370 if you have legal questions about any of this material, or contact a private lawyer.

Eligibility for Services from Legal Aid of West Virginia

The core component of Legal Aid of West Virginia (LAWV) is the Civil Legal Services program, which provides free legal advice and representation for vulnerable people across the state. Over 50 attorneys in 12 offices across the state annually handle thousands of legal cases, helping protect citizens' access to basic rights such as food, shelter, safety, healthcare, education, and more.

Individuals seeking civil legal aid from Legal Aid generally must meet income guidelines, established by the federal government, and legal issues must fall into general priority areas. If a conflict of interest exists, you will not qualify for Legal Aid's services.

The types of legal cases LAWV **typically handles** are those affecting safety, livelihood, access to benefits, and other basic life needs. These include, but are not limited to:

- Protection from domestic violence
- Divorce and family law
- Access to government benefits, including veteran's benefits, Medicaid, food stamps, unemployment compensation, and others
- Consumer protection
- Housing disputes
- Access to healthcare and education

Cases we typically **do not handle** include:

- Criminal law cases
- Personal injury/automobile accident
- Medical malpractice
- Class action lawsuits
- Cases for individuals who do not meet income guidelines set by the federal government

To learn more about Legal Aid of West Virginia, or to access additional legal information and resources, please visit our website **www.lawv.net**. You may also apply for services online, or by calling our application line at 1-866-255-4370.

Important Documents

Start a File for the Child

If you regularly care for a child who is not your own, keep an updated file with important information about the child in a safe place. This file should have:

- ☐ Birth certificate
- ☐ Up-to-date, clear photo of the child
- ☐ School records
- ☐ Immunization records
- ☐ Social Security card
- ☐ Medical card or medical insurance information
- ☐ Any legal documentation, such as guardianships forms
- ☐ Any written documentation stating you are caring for the child
- ☐ Names and phone numbers of all case workers and medical providers
- ☐ Information about the parents

How to Obtain Medical Care for the Child

If you are unable to obtain parental permission for treatment, fill out the attached Affidavit for Consent for Health Care for a Minor. This affidavit asks if you have attempted to contact the parents and how. It also asks if the parent has refused to give consent for the medical treatment. This form is located on page 6.

How to Obtain Documents

1) How to get a certified copy of a child's birth certificate

To obtain a certified copy of a birth certificate, you must be:

- ☐ A grandparent of the person on the certificate, or
- ☐ A brother or sister of the person on the certificate, or
- ☐ Have a legal interest in the certificate

Ordering

- ☐ In person
 - This is the faster way to obtain a certified birth certificate
 - Go to the WV Health Statistics office in Charleston at 350 Capitol Street
 - Bring your ID, \$12, and the completed application, located on page 11.
- ☐ By mail
 - This is the slower method of obtaining a certificate
 - The time to obtain the certificate can range from 5 to 19 days
 - Fill out an application and mail with a check or money order for \$12

How to Obtain Documents

2) How to get a copy of a child's immunization records

There is no central office that keeps these records. You may need to check multiple places to collect a child's complete immunization history.

Some options may be:

- ☐ The West Virginia Statewide Immunization Information System, which tracks shot records
- ☐ The child's former school, if the child left within the last two years
- ☐ The child's former doctor or public health clinic may have these records, but likely only for a limited number of years

**CAREGIVER CONSENT AFFIDAVIT FOR HEALTH CARE AND
MEDICAL TREATMENT OF A MINOR CHILD ****

Name of Child: _____ Child's Birth Date: ____/____/____

TO BE COMPLETED BY PARENT OR LEGAL GUARDIAN, if possible:

I, _____, authorize _____ Name of
Parent or Legal Guardian Name of Caregiver

to consent to health care and medical treatment on behalf of the minor child who is named above. I understand that healthcare and medical treatment includes developmental screening, mental health screening, mental health treatment, ordinary and necessary medical and dental examination and treatment, preventative care, and non-emergency diagnosis and treatment, provided that nonemergency diagnosis does not include an abortion.

Signature of Parent or Legal Guardian

Date

TO BE COMPLETED BY CAREGIVER:

Name of Caregiver: _____ Caregiver's Birth Date: ____/____/____

Address: _____

Relationship to Minor Child (select all that apply):

☐ I am related to the minor child by blood, marriage, or adoption.

☐ The minor child has lived with me since _____.

If unable to obtain signature of parent or legal guardian, you must complete the following:

☐ I have attempted but have not been able to obtain the signature of the minor's parent or guardian.

☐ Describe attempts you have made to obtain the signature of the parent or legal guardian:

☐ The minor's parent or legal guardian has not refused to give consent for health care and treatment of the minor child.

CAREGIVER VERIFICATION: *Caregiver must sign the following before a Notary Public*

I, _____, after making an oath or affirmation to tell
Name of Caregiver

the truth, affirm that the facts I have stated in this affidavit are true of my personal knowledge.

Signature of Caregiver

Date

This verification was sworn to or affirmed before me on the ____ day of _____, 20____.

Signature of Notary Public

My commission expires:_____

GENERAL NOTICES:

- This declaration does not affect the rights of the minor's parent, guardian, or legal custodian regarding the care, custody, and control of the minor, other than with respect to health care, and does not give the caregiver legal custody of the minor.
- This affidavit is valid for one year unless the minor no longer resides in the caregiver's home. Furthermore, the minor's parent, guardian, or legal custodian may at any time rescind this affidavit of caregiver consent for a minor's health care by providing written notification of the rescission to the appropriate health care professional.
- A person who relies in good faith on this affidavit of caregiver consent for a minor's health care has no obligation to conduct any further inquiry or investigation and shall not be subject to civil or criminal liability or to professional disciplinary action because of that reliance.

**This is an example of a consent form based on the West Virginia Caregiver's Consent Act, W.Va. Code § 49-11-1 through 49-11-10. You should consult with an attorney if you think such a legal document might not be right for you.

INFORMATION ABOUT CAREGIVER CONSENT AFFIDAVIT FOR HEALTH CARE AND MEDICAL TREATMENT OF A MINOR CHILD:

What is a Caregiver's Consent Affidavit for Health Care?

A Caregiver's Consent Affidavit is a legal form that is given to a child's health care provider. This form may allow for a relative or someone other than a child's parent to consent to health care and medical treatment for a child. West Virginia law says what exactly should be in the form. West Virginia law also says who can use this form.

A Caregiver's Consent Affidavit does not give the caregiver legal custody of the child. It does not terminate the parent or legal guardian's rights.

Some Helpful Terms

An **affidavit** is a written statement where the person who signs it swears that the information on the form is true and correct to the best of their knowledge. An affidavit usually has to be **notarized** (you have to bring the statement to a notary public to do this).

A **custody order** is a court order that says who a child will live with and who should make decisions about health care, education, and other important things.

A **legal guardian** is a person who isn't the parent but has a court order giving them legal custody of a child.

Can I use a Caregiver's Consent Affidavit to approve medical care for a child?

If you do not have a court order that gives you the right to make health care decisions for a child, you can use the Caregiver's Consent Affidavit to approve medical care for a child if:

- you are over the age of 18 **and**
- you are related to the child by blood (for example: grandparent, aunt or uncle, brother or sister) **or**
- you are related to the child by marriage (for example: you are the husband or wife of any of the child's blood relatives) **or**
- the child has resided with you during the last six months or more.

Does a Caregiver's Consent Affidavit affect the custody rights of the parents or legal guardians?

No. A Caregiver's Consent Affidavit does not affect the rights of the child's parents. The parents still have custody and control of the child.

TIP: A Caregiver's Consent Affidavit does not give you legal custody of the child. If you need to get legal custody of a child, consider seeking a guardianship.

Can I use the Caregiver's Consent Affidavit form if the child's parents object?

No. If the child's parents object to giving you consent for medical treatment for the child, then you won't be able to use the form.

What if I can't find the parents?

If you can't find the parents, you may be able to complete the Caregiver's Consent Affidavit. You will have to try to contact the parents and describe in the affidavit how you tried to contact the parents. You will not be able to use the Caregiver's Consent Affidavit if the parents have told you that they do not consent to you being able to consent to health care and treatment for the child.

What if the parents show up later?

If the parents show up later and don't want you to have their consent, then they can "**revoke**" (cancel) the authorization. If they revoke the authorization, then you can't use it.

What if the parents change their minds? Can they stop me from using the Caregiver's Consent Affidavit?

Yes. Even if the parents signed the Affidavit, they can always change their mind. Parents can always revoke the Caregiver's Consent Affidavit. If they revoke the authorization, then you can't use it.

How do the parents revoke the Caregiver's Consent Affidavit?

If the parents tell you that they no longer give you permission to use the Affidavit, they have revoked it. If they do that, you cannot use it any longer.

Does the Caregiver's Consent Affidavit mean the child is covered by my health insurance?

No, but you can check with your health insurance provider to see whether the child can be covered under your policy.

The affidavit has to be notarized. How do I do that?

You'll need to take the Affidavit to a **notary public** and sign it in front of them. They will notarize the form. You can usually get things notarized for free at your local bank or at the courthouse.

Who should I give the caregivers Consent Affidavit to?

- For health care, give a copy to the child's doctor(s). Also give a copy to any hospital or other medical care facility where the child will receive care.
- For dental care, give a copy to the child's dentist.
- **Be sure to keep at least one copy in a safe place and tell other people where it is.**
- It's a good idea to make several copies of the form in case you need to give it to other people.
- Keep a list of all the people you give forms to. You'll have to tell these people if the child stops living with you.

Is the Caregiver's Consent Affidavit good as long as I take care of the child?

No. The Caregiver's Consent Affidavit is good for **only one year** from the date you sign it. If more than one year has passed since you signed the form, you'll need to fill out another one.



Application for Certified Copy of West Virginia Birth Certificate

Please complete on-line, print, sign, and mail as instructed below or print except where signature is required.

The following pertains to information that would be found on the certificate being requested.

Name of person on the certificate

Date of Birth

First Middle Last

Month/Day/Year

Mother's Maiden Name

First Middle Last

Sex:

☐

Male

☐

Female

Father's Name

First Middle Last

Place of Birth

City _____

County _____

State _____

Hospital

Requestor's Relationship:

Parent/Grandparent ☐

Guardian or agent ☐

Child/Grandchild ☐

Certificate of my own birth ☐

Spouse ☐

Brother/Sister ☐

Making false statements and misuse of vital records will result in criminal and civil penalties pursuant to WV Code §16-5-38.

Signature (Required)

Printed Name (Required)

Requesting _____ copies at \$12.00 per copy and enclosing \$_____.

Please send check or money order. Please do not send cash.

Make checks payable to: Vital Registration

Send copies to: Print your address below.

City

State

Zip

(_____)

Area Code

Your daytime telephone number:

E-Mail address

Submit form with check or money order to:

Vital Registration
Room 165
350 Capitol Street
Charleston, WV 25301-3701
Telephone: (304) 558-2931

LEGAL INFORMATION

Public Benefits Family Supports

Relationship	Definition of Relationship	Potential Benefits Available
Legal Custody	<ul style="list-style-type: none"> Relative or caregiver has custody of the child Relative/caregiver is not a certified foster parent for DHHR purposes Relative/caregiver does not have guardianship of the child and has not adopted child 	<ul style="list-style-type: none"> Relative/caregiver may be able to receive child support from the parents Relative/caregiver can apply for a TANF child-only check through the DHHR
Foster Care	<ul style="list-style-type: none"> Children are in the custody of the state but placed in foster family's home Happens when a caregiver requests the state take custody or because the parents' rights have been terminated in an abuse and neglect case 	<ul style="list-style-type: none"> Caregiver may receive \$600 per child as a Foster Care Subsidy if the caregiver is a certified foster parent May receive Medicaid, school clothing vouchers, and a one-time clothing allowance of up to \$300 when child is placed If caregiver is employed or in school, child care assistance may be available Caregiver reimbursed mileage for visits with family or doctor Child will be eligible for the Foster Care Tuition Waiver for any public university or college in WV
Legal Guardianship	<ul style="list-style-type: none"> Permanent relationship between the child and a caregiver until child turns 18 or the guardianship is terminated Caregiver obtains all rights and responsibilities of a parent Does not terminate parental rights 	<ul style="list-style-type: none"> If DHHR is involved, caregiver may receive a monthly maintenance subsidy and Medicaid A one-time subsidy of up to \$2,000 for legal expenses and child's expenses
Adoption	<ul style="list-style-type: none"> Permanent creation of a parent/child relationship through a court process Birth parents must voluntarily surrender or have their rights terminated before adoption can occur 	<ul style="list-style-type: none"> If state has custody, may receive an Adoption Subsidy Also eligible for Medicaid and School clothing vouchers until the adoption is finalized If new parent receives VA benefits or SSDI, the newly adopted child becomes eligible to receive a check on parent's behalf

Kinship Care Relationships and Possible Benefits

1. Introduction to kinship caregivers of children

A kinship caregiver is a relative who is raising the child of another family member. The most common example is a grandparent raising a grandchild. Another kind of kinship caregiver is a non-relative that the child considers to be a family member. Even if that person is not a blood relative, they can still be a kinship caregiver.

Kinship care arrangements can be informal or formal. An informal kinship care arrangement does not involve the Department of Health and Human Resources (DHHR). For a formal kinship arrangement, the relatives are certified foster parents for a child in state custody.

2. I am caring for a family member's child but do not have a written agreement. Can I receive any benefits to help care for the child?

You should apply for a TANF (Temporary Assistance for Needy Families) child-only check. You can do this at your local DHHR office. The DHHR may require a more formal agreement to prove you are the child's caregiver. TANF child-only checks are cash assistance provided to people who care for children. These checks are \$262 per month per child.

TANF child-only grants do not consider the caretaker's income. The cash assistance is provided once a month via an EBT (Electronic Banking Transfer) card or direct deposit.

3. I am a non-relative caring for a child. Can I receive any benefits to help care for the child?

You should apply for a TANF (Temporary Assistance for Needy Families) child-only check. However, you will be denied because you are not a blood relative of the child. Once you are denied, you can apply to receive a Kinship Check. You can receive this Kinship Check while you wait to be approved as a foster care placement. The Kinship Check is equal in amount to a TANF child-only check. It is an emergency stipend provided to assist with care for the child while foster care paperwork is processed.

4. I am the foster care placement for a family member's child. What benefits can I receive?

If you are a certified foster parent, you may receive a Foster Care Subsidy of \$600 per child per month. The child is also eligible for Medicaid and School Clothing Vouchers. You may also receive a one-time clothing allowance of up to \$300 per child. Child care assistance may be available if the foster parent is employed or in school. You can also be reimbursed for mileage when you take the child to supervised visits with family and to the doctor.

The child may also be eligible for the Foster Care Tuition Waiver program. This program will allow the child to go to a West Virginia public institution of higher education. You can visit <http://www.modify.cedwvu.org/media/2505/modify-tuition-waiver-factsheet.pdf> for more information.

5. What is a guardianship? Why would I need a guardianship for a child?

A guardianship is the transfer of legal responsibility for a child to someone other than the parents. This is a legally binding relationship. It allows the guardian to have custody and make decisions about the child.

For more information, including when a guardianship might be necessary, please read the article on **Infant Guardianships on page 27**.

6. Can I receive any benefits for the child if I have a legal guardianship?

The caretaker may receive a monthly subsidy to help cover expenses. Also, a one-time subsidy of up to \$2,000 is available to cover legal expenses for the guardianship proceedings. This subsidy can also be used for the child's expenses. The child is also eligible for Medicaid.

7. What does it mean to adopt a child?

Adoption is a legal process where someone other than a birth parent receives all legal rights and responsibilities for a child. An adoption permanently ends the rights of the birth parents to the adopted child.

Please read the article on **Adoption on page 31** for more information on adopting a child.

8. Can I receive any benefits during or after the adoption is complete?

The child is still eligible for Medicaid and School Clothing Vouchers while you wait for the adoption.

If the state had custody of the child before the adoption, a monthly subsidy may continue after the adoption to cover the child's expenses. The child will still be eligible for Medicaid. A one-time subsidy of up to \$2,000 is available to cover legal expenses for the adoption proceedings. If the new parent receives Social Security Disability Insurance (SSDI), the newly adopted child will be eligible to receive a check on the parent's behalf.

9. I need time off from work to help care for the child. Do I have any options?

The Family and Medical Leave Act entitles eligible employees to take unpaid leave for up to 12 weeks. If your employer is covered by the Family Medical Leave Act, you may be able to take leave to care for an adopted or foster child.

Child Abuse and Neglect Under West Virginia Law

1. What is child abuse under West Virginia law?

Child abuse means that a child's health and well-being is being harmed or threatened. Under West Virginia law (W.Va. Code § 49-1-201), a child's health and well-being can be threatened in a few ways:

- Actual or attempted intentional infliction of physical or mental injury upon the child or any child in the home;
- Sexual abuse or exploitation of the child;
- The sale or attempted sale of the child; or
- Domestic violence.

2. What is neglect under West Virginia law?

Neglect means that a child's physical or mental health is harmed or threatened by a parent's failure, refusal, or inability to provide:

- Food,
- Clothing,
- Shelter,
- Supervision,
- Medical care, or
- Education.

Neglect can also be a result of the child being without these basic necessities because of the absence of the parent (W.Va. Code § 49-1-201).

3. Who investigates child abuse and neglect in West Virginia?

In West Virginia, Child Protective Services (CPS), which is under the Department of Health and Human Resources (DHHR), investigates possible child abuse and neglect.

4. How are abuse and neglect cases handled in court?

Circuit Court Judges are the judges in West Virginia that hear child abuse and neglect cases. If a Family Court Judge learns about possible abuse and neglect, the Family Court Judge must order the Department of Health and Human Resources (DHHR) to investigate. If DHHR finds that there is abuse and neglect, DHHR will notify the Circuit Court Judge, who will hear the case.

5. How can you report suspected child abuse and neglect?

Call the Department of Health and Human Resources Centralized Intake for Abuse and Neglect at 1-800-352-6513. This hotline is open 24 hours a day and 7 days a week. The names of people who call to report are kept confidential. You can also report child abuse and neglect to your local police department.

6. When can CPS remove children from the home?

If Child Protective Services (CPS) believes a child is in danger, CPS may take emergency custody of the child before an emergency abuse and neglect petition is filed with a court. CPS must then immediately go to a Circuit Court judge or Magistrate Court judge and ask for an order for emergency custody. If CPS receives this order, CPS must file an abuse and neglect petition within 48 hours.

7. What is a petition?

A petition is a legal document that describes the abuse and neglect that supposedly took place. The county prosecutor usually files an abuse and neglect petition in front of the Circuit Court Judge on behalf of the Department of Health and Human Resources (DHHR). However, if DHHR or the prosecutor refuse to bring an abuse and neglect petition, any person who believes abuse and neglect took place can file an abuse and neglect petition in Circuit Court.

8. What is an initial order?

An initial order is the first order from the Circuit Court Judge in an abuse and neglect case. An initial order from the judge may or may not give temporary custody of the child to the Department of Health and Human Resources. The initial order also appoints lawyers for the child and the parents. The order may also appoint a volunteer who helps look at what will be best for the child called a CASA or Court Appointed Special Advocate.

9. What is a preliminary hearing?

During a preliminary hearing, the judge decides if the child needs to be removed from the home. If emergency custody was ordered before the preliminary hearing, the judge will decide if it should continue. West Virginia law tries to keep brothers and sisters together if the judge decides that DHHR should keep custody of the children.

10. Who is the respondent in an abuse and neglect case?

The respondent in the abuse and neglect case is the adult who supposedly abused or neglected the children. If only one parent supposedly abused the children, the other parent can be a respondent if they knew about the abuse and could have stopped it. If one of the parents was also a victim of abuse, that parent should notify Child Protective Services and their court appointed lawyer so that the judge will know.

11. What is an improvement period?

An improvement period is the time frame the judge gives the respondent to correct issues of abuse and neglect. DHHR keeps track of and reports on the respondent's progress during the improvement period. If a respondent does not follow the judge's rules for the improvement period, the judge may cut it short.

Typical rules for an improvement period can be:

- Being financially stable;
- Having a stable place to live;

- Having a psychological evaluation and following what is recommended;
- Getting treatment for drug or alcohol abuse;
- Staying drug or alcohol free;
- Going to parenting classes;
- Going to supervised or unsupervised visits with the child; and
- Going to MDT meetings.

12. What is an MDT?

MDT stands for multidisciplinary treatment team. MDT is both the name of the group of people who meet and the name of the meeting that takes place. The MDT develops, carries out, and monitors a service plan for the family to correct the problems that led to abuse and neglect. The MDT also sends written reports to the judge. The MDT will meet at least once every 3 months until the Judge decides where the child should be permanently placed.

13. Who goes to an MDT?

- The DHHR worker;
- The prosecuting attorney;
- The child's parents or guardians;
- The adult respondents (if they are not parents or guardians);
- Any co-petitioner;
- The lawyers for the respondents;
- The Guardian Ad Litem (children's lawyer)
- The CASA;
- Anyone who is providing services to the respondents to help them deal with the issues that led to abuse and neglect;
- Appropriate school officials;
- The foster parents or custodial relatives; and
- The child (if old enough and appropriate).

14. When does the judge give a respondent an improvement period?

A judge may give a respondent an improvement period before an abuse and neglect adjudicatory hearing, after an abuse and neglect adjudicatory hearing, or as part of the order in an abuse and neglect adjudicatory hearing. To get an improvement period, the respondent must admit there is a problem and make efforts to correct the problem. DHHR will develop a family case plan if the respondent gets an improvement period.

15. What is a family case plan?

DHHR staff prepare a family case plan with the help of the lawyers and the MDT. The case plan lists changes that must happen and services that will be provided to the family to help correct the problems. The case plan also includes a description of how the respondents must change their behavior. The long term or permanency plan for the child is also included. The overall goal of the abuse and neglect process is to correct problems so the family can be reunified or if that is not possible, to find a safe and loving place for the child to grow up.

16. What is an adjudicatory hearing?

At the adjudicatory hearing, the prosecutor, the respondents' lawyers, and the children's lawyers present evidence to support or to defend against the abuse and neglect claims set forth in the petition. The judge decides at the end of the hearing if the child is abused and neglected. There may be more hearings after the adjudicatory hearing if the Judge orders an improvement plan for the respondents to see if they can deal with the issues that led to abuse and neglect.

17. What is a dispositional hearing?

A dispositional hearing is a final hearing in an abuse and neglect case. During this hearing, the judge must choose the least restrictive action to take on the case. This starts with dismissing the petition if the judge feels it is safe to reunite the family. The judge may cut off or terminate the parents' rights if the evidence shows that the abuse and neglect was severe and/or if the respondents cannot change the issues that led to the abuse and neglect. If a parent's rights are terminated, the person no longer has legal status as the child's parent.

18. What is a permanency hearing?

This hearing takes place only if the parent's rights have been cut off. The judge determines what needs to be done to give the child a permanent home. There is a preference to place the child in a foster or adoptive home with his or her brothers and sisters.

19. What standard determines how decisions are made in abuse and neglect cases?

The legal standard for abuse and neglect cases is clear and convincing evidence. This means the judge needs to see stronger evidence than the evidence required for family court hearings, but the judge does not need to see evidence that is as strong as the evidence needed in a criminal hearing. The judge always makes decisions based on the best interests of the child.

20. What will happen to brothers and sisters if more than one child is removed from the home?

West Virginia law requires brothers and sisters to be placed together if possible. If brothers and sisters are separated, DHHR must give reasons to the judge for separating the children. The law says that brothers and sisters who are in foster care should be permanently placed together, if possible.

21. Who gets appointed a lawyer?

The child, his or her parents, and his or her legal custodians have the right to a lawyer. The judge will appoint lawyers in the judge's first order in an abuse and neglect case. The lawyer can continue on the case if the person they were appointed for does not have enough money to pay for a lawyer. The same lawyer can never represent both the parents and the child.

22. What is a co-petitioner?

A co-petitioner is a person who files an abuse or neglect petition along with the prosecuting attorney. A co-petitioner is often a parent who has not abused the child, and who has been a victim of domestic violence. Because the parent was a victim, he or she could not stop the child abuse and neglect. When a co-petitioner is a parent, the judge will appoint him or her a lawyer separate from the prosecutor.

23. What is CASA?

CASA stands for Court Appointed Special Advocate. A CASA is a trained volunteer who advocates for the best interests of the child.

The CASA:

- Gathers information by talking to witnesses and reviewing records;
- Monitors the judge's orders and case plans; and
- Makes written reports to the judge and recommends what is best for the child.

24. What is a GAL?

GAL stands for guardian ad litem. Guardian ad litem is a lawyer who represents the child and the child's best interests. The GAL:

- Meets with the child, social worker, and the child's teachers;
- Works with service providers and the CASA volunteer;
- Investigates the case and goes on home visits;
- Represents the child at hearings and MDTs;
- Helps develop and monitor improvement periods; and
- Sends a written report to the judge with recommendations for the child's best interest.

25. How can you get involved in an abuse and neglect case if you are a relative of the child?

If you would like to foster or adopt a child who is in an abuse and neglect case, you should contact DHHR and speak to the case worker as soon as possible. It is important to contact them early on if you want DHHR and the judge to place the child with you. DHHR will place the child with relatives if it is safe and appropriate. Even if the child is not placed with you, you should stay in contact with the DHHR worker throughout the process. The DHHR worker needs to know if anything happens with the child or the parent. Read the article on Child Abuse and Neglect: How Can Relatives Become Involved to Help The Child for more information.

26. Does DHHR try to place child with relatives in abuse and neglect cases?

Yes, the DHHR must search for possible relatives who are interested in taking the child and would be a good, safe placement. If a relative placement is not possible, DHHR looks for someone who is not a relative but has a bond with the child.

27. What are the requirements to become a foster care provider?

If you are a relative who wants custody of a child, you can apply to get Parent Resources for Information, Development, and Education, or PRIDE, training to be a foster parent. DHHR will do a general walkthrough of your home. If DHHR decides your home is safe and appropriate, DHHR can then place the child in the home. Next, the Homefinding Unit will do a background and criminal records check on you. If you pass these checks, DHHR will certify you as a foster parent and you can get financial help in caring for the child.

28. What is the PRIDE program?

PRIDE stands for Parent Resources for Information, Development, and Education. PRIDE training teaches foster and adoptive parents skills and prepares them for the challenges of fostering or adopting a child.

29. Who should call Legal Aid?

If you are a relative or non-custodial parent of a child who is in an abuse and neglect case and have questions, or if you are a neighbor who witnessed child abuse and neglect and have questions, you can contact Legal Aid at 1-866-255-4370 to apply for help.

30. Helpful Links for Additional Information

WV DHHR Bureau for Children and Families

The Time is Now video - West Virginia Supreme Court of Appeals

Child Abuse and Neglect: How can relatives (other than parents) become involved to help the child?

1. Introduction

This article has specific information about ways that relatives (like grandparents) can seek to be involved in the Child Abuse and Neglect process to help a child. Read our article on Child Abuse and Neglect under West Virginia Law for more general information about what is child abuse and neglect and how the process works.

2. Who investigates child abuse and neglect in West Virginia?

In West Virginia, Child Protective Services (CPS), which is under the Department of Health and Human Resources (DHHR), investigates possible child abuse and neglect.

3. Why would a child be removed from a home?

A child could be removed from the home for several reasons. The DHHR looks at three:

- There is reasonable cause to believe that the child is in imminent danger; or
- Keeping the child in the home is not safe for the child; or
- An emergency made it impossible or unreasonable for the DHHR to leave the child in the home.

If CPS believes a child is in danger, CPS may take emergency custody of the child before an emergency abuse and neglect petition is filed with a court. CPS must then immediately go to a Circuit Court judge or Magistrate Court judge and ask for an order for emergency custody. If CPS receives this order, CPS must file an abuse and neglect petition within 48 hours.

4. How will relatives find out that a child has been removed from his/her parents' home?

The child's caseworker is required to actively search for relatives within the first thirty (30) days of the child's removal from the home.

The child's case worker must find and give notice to the following relatives of the child:

- All adult grandparents of the abused child;
- All parents with custody of a sibling of the abused child; and
- Other adult relatives (including any other adult relatives suggested by the parents).

5. I'm a relative. What do I need to do to get the child placed with me?

There are two options that would allow the child to be placed directly with you. While doing these things doesn't guarantee that a child will be placed with you, it will raise your chances of getting the child.

1. You can become a certified foster parent. You must complete the PRIDE classes and undergo a home study to be certified as a foster parent. PRIDE stands for Parent Resources for Information, Development, and Education. PRIDE training teaches foster and adoptive parents skills and prepares them for the challenges of fostering or adopting a child. For more information, go to DHHR's website.
2. Or, you can ask to become a "kinship placement." Kinship placement is putting the child in the home with any person who is related to the child by blood or marriage including cousins or in-laws. It can also include anyone the child regards as family, such as godparents or close family friends. Once you know that a child in your family has been placed into foster care, contact DHHR and tell them you would like to become a placement for the child. The process for placing the child with you can go faster because you are a relative or kinship.

The best thing is to be proactive and cooperative.

- Reach out to the local DHHR and let them know you are willing and able to be a home for the child.
- Cooperate with the DHHR to do a home study of your house.
- Take the Parent Resources for Information, Development, and Education (PRIDE) classes to become a foster parent.

DHHR workers are often busy handling many cases for abused children. It may seem that they do not want you to have the child. Do not be discouraged. Continue to follow-through and complete all the steps that they ask you to.

These cases sometimes have lengthy delays. You must be "patient but persistent." Keep in touch with the worker. Ask the worker if there is anything else you need to do. If not, be patient but keep in regular contact with the worker as the case unfolds.

6. How can relatives get involved in Abuse and Neglect cases in court?

Abuse and Neglect cases are confidential. Relatives are generally not included in these hearings unless the judge specifically allows it. You can file a Motion to Intervene and ask the Court to include you in the hearings. The Court may accept or deny your motion. This often depends on how far along the case has progressed.

7. Are relative/kinship homes possible placement choices for children?

Relatives can be possible placement choices. The DHHR will look at the relatives' ability to provide and care for the child. The DHHR will do a home study and a background check before placing a child in anyone's home. The process can be sped up for relatives, but to become a permanent placement option, the relative will likely need to be a certified foster parent.

8. Who is thought to be a relative/kinship?

Relatives and kinship individuals can include:

- Any person related by blood or marriage
- Cousins
- In-laws
- Godparents
- Close family friends; or
- Any person the child already knows and has a close bond with.

9. Are certain relatives preferred?

There is no federal or state law that requires children to be placed with blood relatives. However, there is a legal preference for grandparents, kinship, and siblings. But, placement is based on the relative's ability to care for the child, not just on the relative's similar race, color, or national origin. Despite this "preference" in the law for relatives, the Court must always consider the child's best interests. The DHHR should look at relatives early in the case.

10. What does grandparent preference mean?

West Virginia law requires that the DHHR look at the ability and wish of any known grandparent(s) to adopt the child. Grandparents will have to go through a home study evaluation. Grandparents will also be interviewed by a social worker to see if they are a proper placement for the child.

11. What does sibling preference mean?

West Virginia law tries to keep siblings together. Suppose an abused child's sibling was placed in foster care or adopted sometime before the current events. DHHR must reach out to the family caring for the abused child's sibling, to ask if that family wants to also take the abused child. However, if the abused child does not already have an existing bond with the sibling, the courts may choose not to place the child there.

12. What if CPS places a child with me, do I need to do anything?

It's important to work with CPS and let them do a home study and background check. Also, make sure that you give the child adequate clothing, shelter, food, and supervision. During the case, let the child continue her relationship with her parent(s) or legal guardian(s), unless CPS says otherwise.

DHHR most likely will offer some services to the child during the case. Talk with the child's caseworker if you need more help or services to care for the child. Make sure to ask about financial help that may be available. Ask about becoming a certified foster parent. The child's caseworker will better know what benefits are available to you and the child. In some cases, you may be able to file a guardianship petition to care for the child permanently.

13. What happens if a relative's home is going to be the placement for the child?

The worker must look at the relative's ability to offer a safe and stable home for the child. The worker will do this by doing a general safety and well-being check of the home. The worker will also check and make sure the relative is not involved in criminal activity.

14. Do relatives have to become certified foster parents?

The worker must always do a safety and well-being check on all possible home placements, temporary or permanent. Relatives may become temporary placements without being certified as a "foster parent." But to be the permanent placement, the relative will have to be certified to be a foster parent.

Once a relative becomes a certified foster parent, they may be eligible for payments from DHHR to help with the costs of caring for the child. The child's caseworker will be the best resource to see if the financial assistance is available.

15. Can relatives get other help if they aren't certified foster parents?

Yes. TANF (Temporary Assistance for Needy Families) "Child Only" payments, and Medicaid coverage for the child, are available. There may also be other benefits available through DHHR. The child's caseworker will be the best resource to answer these questions.

16. I have the child in my care, but an abuse and neglect case has been started against the parents in court. What is that?

Even if a child has been moved to a safe relative or friend, an abuse and neglect case can be filed against the parents. The parents will have to go to court. The court will decide whether the parents should keep their parental rights.

The parents may be given “improvement periods” where they have the chance to become better parents in hopes of getting custody of their children back. While all of that happens, the children may be in the care of someone else. That person will need to go through the process we’ve described to become either a temporary or a permanent placement for the affected children.

17. Where do Abuse and Neglect hearings take place?

Abuse and neglect hearings take place in circuit court. These are confidential hearings and happen in closed chambers.

18. Who gets a court-appointed attorney?

Parents are given court-appointed attorneys because their parental rights are at stake. Sometimes both parents will have the same attorney. Sometimes each parent will have separate lawyers. This usually depends on the living situations of the parents. The child may also be appointed a Guardian ad Litem (GAL). The GAL speaks for the child’s best interest in the court proceedings. Third parties such as relatives, foster parents, or potential adoptive parents ARE NOT given a court-appointed lawyer. However, they can hire an attorney or ask for legal advice on their own.

19. Who can be in the courtroom during the case?

Abuse and neglect cases are closed, confidential hearings. This means the hearing is not open to the public. Generally, the court will not let others in the courtroom and will not give them information about what happened in a hearing.

The only people allowed into the courtroom are:

- The judge
- A court reporter
- A bailiff
- The prosecuting attorney
- The representative(s) from DHHR
- The GAL
- The parent(s) and their attorney(s)
- Relatives, potential foster or adoptive families and their attorneys may attend, but only if the court has allowed them to intervene in the case.

20. How can relatives get involved in Abuse and Neglect cases in court?

Abuse and neglect cases are confidential. Relatives are generally not included in these hearings unless the judge specifically allows it. You can file a Motion to Intervene and ask the Court to include you in the hearings. The Court may accept or deny your motion. This often depends on how far along the case has progressed.

21. What are possible results in an Abuse and Neglect case?

Many factors decide what the result will be in an abuse and neglect case. Here are possible endings that could happen in an abuse and neglect case:

- The case can be dismissed, and the child returned to the home with no further services;
- The case can be dismissed, and the family can be sent to a community agency for help, such as counseling, parenting skills, etc.;
- The child can go back home, and the DHHR will supervise;
- The DHHR, a private welfare agency, or an appropriate person can be chosen as guardian by the court and given temporary or permanent custody of the child;
- Parental rights can be terminated, and the child can be placed in custody of the non-abusing parent;
- Permanent guardianship;
- The child could be adopted if the parental rights are terminated.

22. Who should call Legal Aid?

If you are a relative or non-custodial parent of a child who is in an abuse and neglect case and have questions, you can contact Legal Aid to apply for help.

Infant Guardianships

1. Introduction to infant guardianships

This article answers some common questions about guardianships for children, also called infant guardianships, in West Virginia. If you are not the parent of a child and you want to get custody, a guardianship is one way to do it. However, a guardianship is not the only way to get custody of a child. You may need to talk with a lawyer to make sure a guardianship is the best tool for your situation.

If you are interested in adopting a child, read the article on **Adoption on page 31** for more information.

2. What is a guardianship under West Virginia law?

A guardianship is when someone other than a child's birth parent asks a Judge to give them custody of the child. A guardianship gives the guardian the rights and responsibilities of a parent. The guardian is responsible for the child's well-being, protection, and education. A guardianship will usually remain in place until someone asks the Judge to terminate it or until the child turns 18.

3. What is the difference between a guardianship and adoption?

Adoption rewrites history. It is like the child was always a part of their adoptive family. For example, an adopted child gets a new birth certificate with their adoptive parents listed on it. A guardianship does not rewrite history. It just transfers the rights and responsibilities from the birth parents to the new guardians. Other differences are:

- *How long it lasts:* Adoptions cannot be undone. They are permanent. Guardianships can last a long time, but they can be set aside by the Judge later if the reasons that led to the guardianship are fixed. For example, if a child's parents have received drug treatment, a Judge may set aside the guardianship and return the rights to the parents.
- *Where you file:* In West Virginia, you can ask for an infant guardianship in Family Court or in Circuit Court. You can only ask for adoptions in Circuit Court.
- *When you should file:* If you want custody of a child who does not live with you because you believe the child is not safe, you can ask for a guardianship. If you want to adopt a child who is staying with you, you must wait until the child has been with you six months. You can also file for a guardianship while an adoption is pending.

If you have questions about Child Abuse and Neglect cases, read the article on **Child Abuse and Neglect Under West Virginia Law on page 15**. You can also read **Child Abuse and Neglect: How can relatives (other than the parents) become involved to help the child? on page 21** for information about how relatives can help when children are in abuse and neglect cases.

4. Do I have to be related to the child to be a guardian?

No. In some situations, such as when there are allegations of abuse and neglect, the Department of Health and Human Resources (DHHR) may prefer that children under the age of 12 years old are put in guardianships with relatives. Not all guardianships involve the DHHR, though.

5. Is there more than one kind of guardian in West Virginia?

There are two different kinds of “guardians” under West Virginia law. The first is the guardian of a child, which is the topic of this article. The second is the guardian of an adult. Guardians of adults are appointed by a Judge when people cannot make decisions about their personal affairs.

6. Who can become a guardian?

A child’s natural parents are his or her guardians. When parents don’t take care of the child, a Judge may appoint someone else to be the child’s guardian to look out for the child. Any person who has a relationship with the child and who is concerned for the child’s well-being can file a petition with the Judge to be appointed as guardian of a child. The Judge cannot appoint a parent or other person whose rights have been terminated. A guardianship will not be put in place if the custody of the child is an issue in another court case.

7. How do I become a guardian?

You must file a petition in either Family Court or Circuit Court. The Judge will look at the facts and decide whether to appoint you as the child’s guardian.

8. When will the court appoint a guardian for the child?

The Judge may appoint a guardian for a child if the court finds that it is in the child’s best interest and either:

- The parents agree;
- The parents’ rights have been terminated;
- The parents are unwilling or unable to exercise their rights (for example, when the parent is in prison);
- If the parents have abandoned the child for more than six months; or
- If there are rare circumstances that would result in serious problems for the child.

9. What is abandonment?

Abandonment is when the birth parent acts as if they will no longer care for the child. West Virginia law says that a parent has legally abandoned a child if that parent

- Knows where the child lives for six months or longer;
- Does not support the child financially, and
- Does not visit or stay in touch with the child.

10. Does the child's parent have to agree to a guardianship?

No. One way to get a guardianship is to have the parents agree to the appointment of another guardian. This is called consent. If the parents will agree to the guardianship, it is best to get this in writing. If the parents do not consent, the Judge can still appoint a guardian for the child.

11. Are guardianships permanent?

No. A guardianship is not permanent because the guardianship can be removed by the Judge. However, a guardianship can last for a long time, even until a child turns 18. Guardianships can also be as little as six months, if the Judge believes that such a short time is all that is necessary to keep the child safe and serve the child's best interests.

12. Does a guardianship mean that the child's parents lose their rights?

No. Guardianship does not end a parent's rights to their child forever. Instead, allows someone else to make decisions regarding the child's care and well-being during the guardianship.

13. Do I have to be a foster parent to get a guardianship?

No. You do not have to be a foster parent to file for guardianship, but you can be. Fostering a child is a more temporary arrangement that is begun by the state's involvement with the child's family. When a child is in foster care, the state has legal guardianship over the child. Therefore, if a child cannot be reunited with his or her family, the foster parent can petition a Judge to take over legal guardianship from the state instead of the child's parents.

14. Can a parent have a guardianship removed?

Yes. Parents can ask the Judge to remove a guardianship. The parent must show the Judge that there has been a significant change in their circumstances and that removing the guardianship is in the best interests of the child.

15. Can I receive financial benefits to help take care of the child?

Yes. A guardian assumes financial responsibility for the child during the guardianship. However, you can apply for some forms of financial assistance when a child is in your home.

Guardians can apply for possible financial support through West Virginia's WV Works program.

If a Judge grants a guardianship after a child is in the care of the Department of Health and Human Resources, you can apply for financial help with the guardianship, called a subsidized guardianship. You may be eligible to receive a monthly check, Medicaid, and a one-time payment of up to \$2,000 to help with legal fees. In order to get this, you need to be certified as a foster parent. In order to become a foster parent, contact your local Department of Health and Human Resources office.

16. Can I represent myself in an infant guardianship case?

Yes. The Supreme Court of Appeals of West Virginia has forms online that you can use to file a petition for a guardianship, available at <http://www.courtswv.gov/lower-courts/infant-guardianship/index-infant-guardian.html>.

Whether you are a parent or a potential legal guardian, you should try to discuss legal guardianship with a lawyer to understand your choices and your rights. You can apply for help from Legal Aid at 1-866-255-4370 or contact other legal resources for more information.

Adoption

1. Introduction

This article answers questions about adoption under West Virginia law. If you are not the birth parent and you want to get legal custody of a child, adoption is one way to do it. However, adoption is not the only way to get legal custody of a child. You may need to talk to a lawyer to make sure adoption is the best legal tool for your situation.

2. What does adoption mean under West Virginia law?

Adoption is when someone other than the birth parents asks a Judge to give them all the legal rights and responsibilities of a parent. In West Virginia, you file for adoption in Circuit Court and the Circuit Court Judge decides on the adoption case.

3. Is there more than one kind of adoption in West Virginia?

There are two kinds of adoptions in West Virginia: a step-parent adoption and a third-party adoption. A step-parent adoption is when the husband or wife of a birth parent asks to adopt that birth parent's child.

4. What is a third-party adoption?

A third-party adoption is when any person other than a step-parent asks to adopt a child. Third-parties who ask to adopt a child can be other family members such as a grandparent, an aunt or uncle, or a sister or a brother. However, individuals or couples who are not part of a child's family can ask to adopt a child in a third-party adoption.

5. What are the differences between adoption and guardianship?

- *How long it lasts:* A guardianship is when someone other than the birth parent asks a Judge to give them legal custody of a child for a set amount of time. A guardianship usually ends when the child turns 18 if the Judge did not set it up to end sooner. If you want to be a child's legal guardian, you can ask for the guardianship to end at a set date, or when a certain event happens. For example: when the child turns 10, when the child starts school, or when the child's mother finishes drug treatment. If you adopt a child, on the other hand, the Judge gives you permanent legal rights over the child.
- *Where you file:* In West Virginia, you can ask for guardianship in Family Court or Circuit Court. You can only ask to adopt a child in Circuit Court.
- *When should you file:* If you want to adopt a child who is staying with you because the birth parents are not caring for the child, it is usually best to wait until the child lives with you for six months. If you want custody of a child who does not live with you because you believe the child is not safe, you can file for a guardianship to get custody, and decide later if you want to adopt.

6. How do I begin an adoption?

You file a “petition” for adoption with the Circuit Clerk for the county you live in. You need to send a copy of your petition to the child’s birth mother and anyone who claims to be the father (unless a Judge cut off both birth parents’ rights in an abuse and neglect case). You also need to copy any other person who claims legal or physical custody of the child. You need to be able to say that neither birth parent can care for the child because one of the following is true for each birth parent:

1. The birth parent agrees to the adoption, OR
2. The birth parent freely gives up rights to the child, OR
3. A Circuit Court Judge took away the birth parent’s rights, OR
4. The birth parent “abandoned” the child, OR
5. The birth parent is dead.

After you file the adoption paperwork, the Circuit Judge should hold a hearing within 45 days.

7. What is abandonment?

Abandonment is when a birth parent acts, for six months or longer, as if they will not care for the child.

West Virginia law says that:

A parent has legally abandoned a child over six months old if that parent knows where that child lives and, for six months or longer:

1. Does not support the child financially and
2. Does not visit or stay in touch with the child.

A father has legally abandoned a baby under six months old if the father says he is not the father and he does not support the child financially or stay in touch with the child.

If a parent “abandons” the child with no gaps in time for six months or from the child’s birth if the child is under six months old, then that child is free for adoption.

8. What if it is not the birth parent’s fault that they cannot support the child or stay in touch with the child?

If a birth parent can prove it is not their fault that they cannot support a child, then West Virginia law does not hold it against them. One reason would be if the parent is disabled and cannot work. Likewise, if a birth parent can prove it is not their fault that they cannot stay in touch with or visit the child, then West Virginia law does not hold it against them. Some reasons a parent cannot stay in touch could be if they are in the military or in jail, if they are seriously ill, or if a Family Court told them in an order to stay away from the child.

9. What is consent?

When birth parents freely agree to an adoption, they are giving “consent.” For an adoption to go forward, West Virginia law requires that both the birth mother and father consent to the adoption unless a Judge cut off their rights or they abandoned the child. If a Judge cut off the rights of one parent or one parent abandoned the child, then only the other parent needs to consent.

10. Does consent to an adoption need to be in writing?

For consent to be legal, you must give it in writing. You must sign and date the consent in front of a notary public. The following things must be listed on a birth parent consent:

- The birth parent’s current address.
- The name, date of birth, and current address of the child.
- That the birth parent allows the adoptive parent to make decisions about the child’s medical treatment.
- That the adoption cuts off the birth parent’s rights forever;
- Whether the child is from a Native American Indian tribe;
- Whether the child owns any property.

The Circuit Court Judge may agree to an adoption without written consent if the birth parent comes in person to the adoption hearing and gives consent in front of the Judge.

11. Can I pay someone to get them to consent to an adoption?

In general, a person or adoption agency cannot give a birth parent money, property, services, or anything valuable in exchange for consent. There are a few exceptions such as adopting parents who agree to help a birth mother with medical expenses for the birth. If you are thinking about agreeing to this kind of support for a birth parent, you should talk to a lawyer if possible. You should also make sure the agreement is specific and in writing.

12. What is the difference between consent and relinquishment?

Relinquishment is a kind of consent that happens when a child’s birth parent or guardian gives up their rights, so the child can go into an adoption agency’s legal custody. The things that must be listed in a relinquishment are the same as for a consent, but instead of naming adoptive parents, a relinquishment names the adoption agency.

13. If I am the birth parent, how do I go about giving my consent for adoption?

If you are the birth parent, you can give consent for adoption starting any time 72 hours or 3 days after the child is born. As it says above, you must give your consent to an adoption in writing, with a notary public to sign as a witness.

If you give your consent to an adoption, you are legally giving up your rights as a parent. Therefore, West Virginia law says you must consent of your own free will. If you are thinking about giving up your child for adoption, talk to an attorney to better understand your rights.

14. What if one parent does not consent?

If one parent does not consent, the adoption can sometimes still go ahead. The Circuit Court Judge would need to decide that the parent who will not consent abused or abandoned the child and should have their rights cut off. If the Judge finds that the objecting parent is a fit parent who did not abandon the child, the adoption will not be granted.

15. What if the birth father is unknown?

If the birth mother is not sure who the birth father is, she will need to file a document called an “affidavit” with the court. The affidavit should state:

- Whether the birth mother was married or living with a man at the time she got pregnant;
- Whether any man gave the birth mother money to support the child or for pregnancy costs;
- Whether the birth mother listed a father on the birth certificate or told anyone at the hospital where she gave birth the name of a father;
- Whether the birth mother listed a father when she applied for public assistance.
- Whether the birth mother told any man that he may be the birth father.
- Whether any man, anywhere, has claimed to be the father;

The affidavit should also state:

- The last known address of any man listed above;
- That the mother understands that if she does not name a birth father, it can delay an adoption; and
- That the birth mother understands that the fathers identify will be used only for adoption.

If the birth mother states in an affidavit that she is unsure who the father is, the Judge will review the information and decide if they can identify the likely father. If the Judge can identify a likely father, the Judge will notify the father of the adoption hearings. If the Judge cannot identify a likely father, then the Judge may publish notice of the final adoption hearing in a local newspaper.

16. Does a child have to agree to an adoption?

Children under the age of 12 do not have to agree to an adoption. If a child is under the age of 12, the Court can order the adoption based on the child’s best interests, even if the child does not want it. If a child who is being adopted is over the age of 12, he or she usually needs to agree to the adoption in front of the Judge. The Judge can ignore the wishes of a child 12 or older if there are safety issues or other exceptions.

17. What if I want to adopt someone over the age of 18?

You can adopt another person over the age of 18 if the person being adopted (the “adoptee”) agrees to the adoption. The adoptee’s agreement is the only consent needed if the adoptee is over 18. You do not have to get consent from the adoptee’s birth parent(s) if the adoptee is over the age of 18.

18. Can I ask for an “open” adoption?

An open adoption is an agreement that says that the birth parents can stay in touch with the child after the final adoption. In West Virginia, all adoptions are closed adoptions. Even if the adopting parents or the birth parents ask for an open adoption, the state of West Virginia will not grant one. The adoptive parents and birth parents can agree to an open adoption, but if a dispute comes up, the adoptive parents have final say. A Circuit Judge cannot enforce an open adoption agreement.

In West Virginia, birth parents and adult adoptees can sign up to find each other. If both the birth parent and birth child “register” to find each other, the state will notify both sides. This is called the Voluntary Adoption Registry and you can learn about it on page 87-88 of the **Adoption Policy handbook** on the DHHR website.

19. Do I have to be screened to adopt a child?

The Judge will check if you have enough income and resources to support the child. The Judge will also ask if you have a criminal history. The Judge may also ask the Department of Health and Human Resources (DHHR) or an agency to do a “home study” of where you live. Home studies help the Judge decide if your home is safe for the child. Once social workers from DHHR or another agency visit, they will report to the Judge. Sometimes the Judge does not require a home study if the children have been staying with the adoptive parents for some time.

20. What are the legal effects of an adoption?

When the Judge enters the final adoption order, the order cuts off the birth parents legal rights and duties. The adoptive parents take on all the legal and financial rights and duties of any parent.

21. Can I adopt my foster child?

You can adopt your foster child if a Circuit Judge cuts off the birth parents’ rights. Before you try to adopt your foster child, you should check with DHHR to see if adoption is the best option. Adoption will change any benefits you currently get as a foster parent. DHHR may give you up to \$1,000 to hire a lawyer to do the adoption. Please see **DHHR’s website** for more information.

22. Can I receive any tax benefits for adopting a child?

If you adopt a child, you can count that child like a birth child as a tax dependent. You can also get child tax credits from the state and the federal government. West Virginia will give you a one-time tax credit for a “nonfamily” adoption. If you adopt a child who is not related to you by blood or marriage, you could qualify for the credit. The one-time credit is for up \$4,000 and you can take the payout over a 3-year period. You will need to fill out **Form NFA-1** and file it with your state income tax.

On federal tax returns, you can file for one-time tax credits for some adoption costs. You can use the credit to cover what you owe in taxes in the year of the adoption. If you have any credit left over, you can use it for up to five years. For more information see the **IRS website**.

If you adopt a special needs child, you can apply for state and federal money to help with the child's medical needs. You should talk with a lawyer or tax professional to learn more.

23. Are there other supports that I can gain or lose if I adopt a child?

If you get a TANF (Temporary Assistance for Needy Families) "child only" check from DHHR because you care for a child that is not your own, you will lose that check if you adopt the child. However, if you get a Social Security Disability check or Veterans' Benefits, your adopted child will get the same benefits your same age birth child would get.

24. Can I represent myself in an adoption hearing?

Whether you are a birth parent or someone who wants to adopt a child, you should try to talk about adoption with a lawyer to understand your choices and protect your rights.

The Supreme Court of Appeals of West Virginia does not have forms you can fill out for adoption. You will probably need a lawyer to at least help you write the forms or give you the information you need for the forms you file. You can apply for help from Legal Aid at 1-866-255-4370 or contact other legal resources.

Grandparents' Visitation Rights

1. Do grandparents have legal rights to visits with their grandchildren in West Virginia?

West Virginia law protects a grandparent's right to visit with a grandchild in some situations. At the same time West Virginia law also protects the parent-child relationship from interference by grandparents. This article will help you understand the considerations.

The Legislature passed a specific West Virginia statute about Grandparent Visitation. This law defines when and how grandparents may seek a court order forcing a parent to permit the grandparent to spend time with the grandchild. The West Virginia Supreme Court has been emphatic that this law is the “exclusive means through which a grandparent may seek visitation with a grandchild.”

2. What should I do if I want to have visitation with my grandchild?

First, talk to the child’s parents. Tell them you want to see your grandchild. Try to reach an agreement. It is always best to try to resolve the issue with the parents instead of asking for court-ordered visitation.

3. In West Virginia, is a grandparent permitted to seek court-ordered visitation with a grandchild?

Yes. Under West Virginia law a court should grant “reasonable” visitation to a grandparent when two general conditions are met:

- Visitation would be in the best interests of the child, and
- Visitation would not substantially interfere with the parent-child relationship.

For example, Grandparent Visitation may be awarded when the parent through whom the grandparent is related has died.

In making decisions about Grandparent Visitation, however, courts must give “significant weight” to the wishes of the fit parent. The decision is not based ONLY on the “best interests of the child.” The courts must also recognize that the US Constitution protects the right of a fit parent to make decisions regarding the care, custody and control of his or her children.

4. What if my son or daughter is not available to participate in the case, or does not have custody or visits with the grandchild?

You will have an easier claim in this situation. For example, perhaps your own child has died or moved away, and no one knows where she is. It is the “other” parent who doesn’t want you to see the grandchildren. In this situation you must persuade the judge that grandparent visitation is “probably” in the grandchild’s best interest even though the parent objects. But the court must also give special weight to the wishes of the fit parent.

5. What if my own son or daughter will not let me visit with my grandchild? Or if I want to visit with the grandchild more than my own son or daughter lets me?

You will have a much harder claim in this situation. If your own child has custody or visitation, the law “presumes” that no order of grandparent visitation should be issued. The assumption is that you can see the grandchildren when they are with your son or daughter.

To overcome the objection of your own child, the law requires you to present a very strong case. You must make a “clear and convincing” showing that visitation is in the child’s best interest. This will be particularly hard when the parent (your child) is a fit and proper parent but does not want you to see the grandchildren.

Here is how the two situations compare:

- If your own child is absent or unavailable to express her wishes about your visits, you must show that visitation is “probably” in the best interest of the child, even after the court gives special weight to the wishes of the parent.
- If your own child objects to your visits, you must show “clear and convincing” evidence that visitation is in the best interest of the child, even after the court gives special weight to the wishes of the parent. Not just “probably,” but “clear and convincing.” In the legal system this is a big difference.

6. How does the court figure out whether Grandparent Visitation is the in “Best Interests” of the child?

Always remember that the court will look at the Best Interests of the child and give special weight to the preferences of a fit and proper parent. These disputes are not decided according to what’s best for the grandparent. They are decided based on the Best Interests of the child.

The judge will consider a long list of factors to assess the Best Interests of the Child. These include:

1. The child’s age,
2. The relationship between the child and the grandparent,
3. The relationship between the child’s parents and the grandparent,
4. The time since the child last had contact with the grandparent,
5. The effect grandparent visitation would have on the relationship between the child and the child’s parents,
6. Any custody and visitation arrangement that already exists between the parents with regard to the child,
7. The time available to the child and his or her parents. For example, the child’s school schedule, each parent’s work schedule, or the holiday and vacation schedules.
8. The good faith of the grandparent in filing the motion or petitioner,
9. Any history of physical, emotional, or sexual abuse or neglect performed, assisted or allowed by the grandparent,

10. Whether the child has lived with the grandparent for a significant period, with or without the child's parent or parents,
11. Whether the grandparent has been a significant caretaker for the child,
12. The preference of the parents with regard to the requested visitation. The court must give "special weight" to this factor, assuming the parent is fit and capable, and
13. Any other factor which the Court might think is relevant to the best interests of the child.

7. Who speaks for the children?

After you file a court case asking for visitation, the court may appoint a "guardian ad litem" for the child. This is a person appointed by the judge to help sort out what would be in the best interests of the child. A guardian ad litem is an attorney who works to protect the child's interests. The parents and the grandparents speak for themselves; the Guardian ad Litem speaks for the grandchildren.

8. Under the law, who qualifies as a "grandparent" who can file for visitation?

A "grandparent" is defined as any of the following:

- any biological grandparent, or
- a person married to a biological grandparent, or
- any person granted custody of the grandchild's biological parent.

9. Who can seek grandparent visitation?

If the grandchild is living in West Virginia, any grandparent of that child can ask for court-ordered visitation. The grandparent does not have to live in West Virginia.

If the grandchild does not live in West Virginia, no Grandparent Visitation case can be filed in West Virginia.

10. Where do I file for visitation?

You must file your petition in the county where the child lives. (This may not necessarily be where the grandparent lives.)

You must file your case in Family Court. The only exception is if there is already an abuse and neglect case in circuit court involving the child. In that situation you must file your request for visitation in circuit court.

If the child's parents already are going through a custody or divorce case in Family Court, you must file in that pending Family Court case for a grandparent visitation order.

11. Should I get a note from my grandchild saying she wants to visit me?

No, absolutely not! The courts do not want to force children to have to choose which family member they love the most. In fact, the law says that "no person shall obtain or attempt to obtain from a child" a recorded or written statement. Also, if someone does get a statement, the law says that the Family Court "shall not accept or consider such a written or recorded statement." Finally, the law is clear that "a child shall not be called as a witness" in a grandparent visitation proceeding.

The judge can decide to interview children in private. No one can be present during those private interviews except the judge, the children, and any guardian ad litem who was appointed by the court to help the children. None of the parents, none of the grandparents, and none of their lawyers can be in the room during the private interview with the children.

12. What is Supervised Visitation?

An order granting visitation may require "supervised visitation" or other limitations. Supervised visitation is when another person is required to be present during a grandparent's time with his/her children.

Other limitations may be placed on a grandparent's visitation so as not to interfere with the child-rearing decisions of the child's parents. For example, a court can order:

- That a grandparent cannot influence the child's religion if different than the parents;
- That the grandparents cannot expose the child to conditions or circumstances against the preferences of the child's parents.

Generally, a biological parent has a right to raise her child any way he/she deems suitable, as long as the child is not abused or neglected. Courts are not the place for disputes between parent and grandparent about how to raise the grandchild.

13. Can a court take away a grandparent's rights?

Yes, if it is proven that the grandparent violated the rules and conditions of the court-ordered visitation.

14. What if I filed for visitation in a previous court proceeding and a final order was issued already? What can I do now?

You must ask that Court to "modify" the order. You must continue to follow the existing order as long as it is in effect. You cannot make changes in the arrangements until the Court changes the order.

The court will grant a modification only when there has been a "material change" in the circumstances. For example, you could seek visitation when the child's parent(s) move out of the state. If there hasn't been a change in circumstances the court is not likely to change the order.

15. What if my son/daughter's ex-wife/husband remarries?

The remarriage of the custodial parent does not affect the court's ability to grant visitation to a grandparent. The situation will still be judged by the same two basic possibilities:

- If the parent through whom you are related to the grandchild is absent or unavailable, then you must show that grandparent visitation is probably in the child's best interest, even after giving "special weight" to the preferences of the parent;
- If the parent through whom you are related to the grandchild is present and objects to your visits, you must show that grandparent visitation is "clearly and convincingly" in the child's best interests, even after giving "special weight" to the preferences of the parent.

16. What happens if my grandchild is later adopted?

Most of the time, an adoption automatically eliminates the court-ordered grandparent visitation. The only exception is when the adopting parent is also a step-parent, grandparent, or other relative of the child. In that case the grandparent visitation order can remain in effect.

[Note: This article was written by Lyne Ranson, an attorney practicing in Charleston, West Virginia. For more information about Ms. Ranson, see her web site at www.lyneranson.net. Minor updates were made by LAWV in 2017 to reflect decisions by the West Virginia Supreme Court of Appeals about Grandparent Visitation.]

Resources for Young Adults

Education Resources

- West Virginia Department of Education – www.wvde.state.wv.us
 - Information for students about scholarships, credit recovery, and AP course fee waivers
 - Information for parents about assessment results, immunizations, and college readiness
- College Foundation of West Virginia - https://secure.cfww.com/Home/_default.aspx
 - Resources for students and parents on college, career planning, financial aid, and more
 - Students can create an account to track progress and help plan for the future

Alternative Education Pathways

- Career Technical Education (CTE) Programs - <http://careertech.k12.wv.us/>
 - Provides high school students with technical training to connect learning in core classes
 - Can be vocational training or pre-technical training for engineering or other programs
- Pathways to the Future - <http://www.pathwayswv.org/index.php>
 - Provides resources, tools, and contacts to help students with disabilities
 - Includes information on planning for education, career, and independent living after high school
- WorkForce Innovation and Opportunity Act (WIOA) Youth Program - <http://www.hrdfwv.org/wioa-youth-programs.html>
 - Helps low-income young adults achieve education goals
 - Eligible youth between 16 and 24 years old create personalized plans for their future

Job Training and Preparation

- Workforce West Virginia - <http://workforcewv.org/>
 - Can provide paid training in certain job fields
 - Hosts job fairs throughout the state
 - Provides an online portal to search for jobs
- Job Corps – www.jobcorps.gov
 - Federally-funded program that provides academic and career training for students
 - Eligibility requirements and income guidelines
 - Available to young adults between 16 and 24 years of age
- YouthBuild - <http://rchawv.org/youthbuild/youthbuild-3.html>
 - Participants earn money while obtaining valuable experience building houses
 - Both classroom and on the job experience
 - Out of school youth between 16 and 24 years of age can apply
 - 10-month program, 35 hours per week, available at 3 locations in West Virginia
- Employment for Independent Living - <http://www.hrdfwv.org/employment-for-independent-living.html>
 - Helps youth aging out of foster care find employment and develop work skills
 - All youth must be between 16 and 21 years of age, currently in foster care or a group home, or turned 18 in state's custody

Other Legal Resources in West Virginia

Legal Information by Phone:

Legal Aid's Law Line- 1-866-985-2948

Listen to recorded phone messages with information on common legal problems like divorce, custody, domestic violence, housing, DHHR benefits and how to represent yourself in court. Each message is 2-3 minutes. Available 24 hours a day, 7 days a week.

Legal Information Hotline:

Tuesday Legal Connect- 1-800-642-3617

On Tuesday evenings from 6- 8 p.m., volunteer attorneys for the West Virginia State Bar answer phone calls to provide legal information and referrals. This information and the call are free.

Legal Information Online:

Legal Aid's Self-Help Library - www.lawv.net/resources/self-help-library

Legal Aid of West Virginia's Self-Help Library is a place where you can find information about civil legal problems, such as divorce, housing issues, bankruptcy, and more.

Legal Information Websites:

Court Forms - West Virginia Judiciary – <http://www.courtswv.gov/legal-community/court-forms.html>

The website for the West Virginia Supreme Court of Appeals has a number of forms available for persons to use and file on their own.

Frequently Asked Questions by Seniors- West Virginia Senior Legal Aid – <http://www.seniorlegalaids.net>

West Virginia Senior Legal Aid has legal Frequently Asked Questions on a number of topics, particularly focusing on issues faced by senior citizens age 60 and over.

Legal Advice Website:

West Virginia Free Legal Answers – <http://wv.freelegalanswers.org>

West Virginia Free Legal Answers is a website where low-income persons can post legal questions and receive free brief advice from a volunteer attorney. To sign up go to <http://wv.freelegalanswers.org>, answer the eligibility questions, create an account and submit the legal question you need answered. West Virginia Free Legal Answers is a program of the West Virginia State Bar and American Bar Association.

Apply for free legal help:

In addition to Legal Aid, there are organizations in West Virginia that provide free civil legal help if you qualify for their services. To apply for services, you will need to contact each organization.

- **Mountain State Justice - 1-800-319-7132**

If you qualify, provides free legal assistance to low-income consumers who are facing home foreclosure, were lied to in the process of obtaining a loan, purchased a defective home or car; or have received unfair charges on loans or credit accounts. You can also contact Mountain State Justice if you would like to apply for free legal assistance if you are a prisoner or know a prisoner that is being unfairly or unsafely treated in a jail or correctional facility.

- **West Virginia Senior Legal Aid (WVSLA) - 1-800-229-5068**

If you qualify, provides free civil legal services for senior West Virginians age 60 and over. The person age 60 or over who needs legal help must be the one who actually calls WVSLA, not someone else calling on his or her behalf.

- **Clinical Law Program – WVU College of Law - 1-304-293-7249**

If you qualify, provides free legal services to low-income persons, generally in north central West Virginia, in a number of areas including family law, social security, and other public benefits, property issues, consumer debt relief, bankruptcy, and immigration. The Clinic does not take new cases during holiday or summer breaks when law students are not in school.

Consumer Help:

Consumer Protection Division- Office of the Attorney General - 1-800-368-8808

Consumers who believe they are the victim of unlawful consumer practices can file a complaint with the **Consumer Protection Division**.

Lawyer Referrals to Lawyers:

West Virginia Lawyer Referral Service - <http://www.wvlawyerreferral.org/>

The Lawyer Referral Service assists people in finding lawyers that are currently taking referrals in specific practice areas. Lawyers in West Virginia are not certified by the West Virginia State Bar in any specific areas of law, but they may have experience or interest in that specific area of practice. On this website, you can search for an attorney in your area. By signing up for this service, the attorney has agreed to see you as a client for an initial consultation for a fee of no more than \$25 for the first 30 minutes of the consultation.

Need help with food, clothing, shelter, medicine, or other services?

West Virginia 211 - <http://www.wv211.org/> or dial 211

West Virginia Coalition Against Domestic Violence - <http://www.wvcadv.org/>

West Virginia Department of Health and Human Resources - <http://www.dhhr.wv.gov/>