Filing the Child Abuse/Neglect Petition

W.Va. Code §49-1-3, 49-6-1. 2. 3. 6. 7; Rules of Procedure for Child Abuse and Neglect Proceedings

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PRE-PETITION ACTIVITY FOR SOCIAL WORKERS

FAMILY PRESERVATION

Requirement to make all reasonable efforts to avoid court action and Petition (W.Va. Code 49-6-1)

Document all prior referrals that have been substantiated (and if there's a significant history of unsubstantiated referrals, include those, too)

Identify the documented history of social services and outcomes

Gather all biographical info for all adults in home, obtain correct street address for service of process, obtain ssn and dob for all parties, Respondents and children

Notify Prosecutor as soon as possible when you believe a Petition may be needed

Provide all names and contact information for all witnesses, along with a summary of their anticipated testimony or statement

Fully investigate (speak with relatives, teachers, counselors, neighbors, or anyone else with information)

Obtain all medical records for the children if the referral has come from a medical source (including historical records if relevant)

Obtain all school records if there is a concern of educational neglect

Provide Prosecutor with the contact information for any and all services providers who have been working with the family

EXCEPTIONS TO SPECIFYING FOR FAMILY PRESERVATION EFFORTS "AGGRAVATED CIRCUMSTANCES"

Murder of another child (by parent)

- Voluntary manslaughter of another child (by parent)
- Malicious Assault—"Serious bodily injury"

Prior termination of parental rights

***If there was a prior voluntary relinquishment of parental rights, there is no statutory mandate to file a Petition, but circumstances may warrant the Department filing a Petition nonetheless.

Emergency Removal from parental custody before a Petition is filed

§49-6-3(c)--Emergency Situation in presence of CPS worker constituting imminent danger AND worker has probable cause to believe child will be removed from the county or will suffer more abuse before petition can be filed.

* Removal requires immediate (same day) ratification by circuit court judge or juvenile referee by a ratification order (DHHR has form petitions and orders.

* The petition must be filed within two judicial days or the child must be returned to parental custody.

§49-6-9(a)—A law enforcement officer may take custody of a child to then give custody of the child to CPS if the child is abandoned or the officer believes that the child is in need of emergency medical treatment

- "Abandonment"—the child is without supervision or shelter for an unreasonable period of time in light of the child's age and ability to care for him/herself **and** the circumstances present an immediate threat of **serious** harm
- "Emergency need for medical treatment"—reasonable belief that a lack of treatment will result in permanent physical damage, e.g., profuse arterial bleeding, dislocation or fracture, unconsciousness, evidence of ingestion of poisonous substance, etc.
- DHHR must make all reasonable efforts to place child with neighbors, relatives, or friends before child can be considered abandoned (or place home services worker in home for up two twelve hours)
- Petition must be filed within ninety six hours or child must be returned to parental custody
- Leave written notice for parents as to why the children were removed and who they can contact
- If parent appears at the DHHR in apparent fit condition to care for the child, must return the child to the parent (unless emergency Petition has been filed with an Order Transferring Custody)

IMMINENT DANGER PETITION (W.VA. CODE §49-6-3)

Attachment No. 1

"Imminent danger to physical well-being means emergency situation where the welfare or life of a child is threatened." W.Va. Code §49-6-3

- Sexual abuse or exploitation
- Non-accidental trauma
- Battered child syndrome—a combination of physical and other signs indicating a pattern of abuse
- Nutritional deprivation
- Abandonment
- Inadequate treatment of a serious illness or injury
- Substantial emotional injury
- Sale or attempted sale of a child
- Caretaker's impairment by drugs/alcohol such that the child's health or safety are jeopardized

Presentation of Emergency Petition to Court

- Presented ex parte to Court
- Be prepared to advise Court as to why there are no reasonable alternatives to removal from parental custody
- Questions regarding alternatives to parental custody arise more frequently when children have been left alone and a non-custodial parent or other relative may be available to provide custodial care

CONTENTS OF PETITION (W.Va. Code §49-6-1; Rule 18)

"Mere conclusory statements that abuse has occurred will not suffice (State ex rel. Paul B. v. Hill, 496 S.E.2d 198 (W.Va. 1997))

- Specific conduct shall be stated—time, place, how statutory definitions apply. Explain the chain of events and specify activities of Respondents at all applicable times and places.
- Petition must be verified and notarized
- Describe all children—including any not targeted for abuse or not vulnerable to neglect in the same way as very young children
- Describe all previous supportive services by DHHR; explain how these have not been accepted by parents or how they have not remediated the abusive or neglectful environment
- OR explain why the circumstances did not permit time or necessity for services to be initiated or offered
- Include the relief sought: the removal of the children, court-ordered services and monitoring of the family, scheduling of the preliminary hearing, etc.
- A Petition may be amended at any time until the adjudicatory hearing; even after the adjudicatory begins, a petition can be amended unless such amendment would be prejudicial to the Respondents.

REMOVAL ORDER

I. Include the facts about the necessity of the removal
   I. Initial removal order must include the finding that it is contrary to the child's best interests to remain in parental custody AND that the DHHR has made reasonable efforts to prevent the removal from the home OR that the emergency situation made reasonable efforts impossible (Attachment No. 2)
   II. If that language is not included in the initial removal order, eligibility for Title IV-E funding can NEVER BE REGAINED, even by an amended order.

II. Appointment of counsel for children and for custodial parent (noon-custodial parent may apply for counsel.
III. Sets preliminary hearing within ten days, not counting intervening weekends (Rule 7)

PETITION IS FILED AND REMOVAL ORDER IS ENTERED—NOW WHAT?

- Personal service on Respondents (see alternative forms of service in W.Va. Code §49-6-1(b)—by mail or publication
- Service of Petition and Order must include notice of right to attorneys and notice of hearing
- Notice of rights and hearing time should advise that appointment of counsel is only through preliminary hearing—court will require financial affidavit to confirm eligibility for continuing representation by appointed counsel
- Provide an affidavit for request for court-appointed counsel along with the Petition and notice
- Notice of hearing must also be given to DHHR and to any relative or person having physical custody of child

NON-EMERGENCY PETITION (Attachments 4 and 5)

- Non-emergency petitions do not seek immediate removal of children, as imminent danger is not present
- The non-emergency petition seeks court-imposed services and supervision because voluntary services have not abated the abuse/neglect present in the home or the Respondents have not accepted services
- Attorneys are not appointed automatically in most jurisdictions—Respondents must apply and qualify
- The order sets the adjudicatory hearing (No preliminary hearing since there has been no removal of the children.

CO-PETITIONERS

- Co-petitioner can be a "battered parent"—defined in West Virginia Code as one who has been judicially determined to not have condoned the child abuse or neglect and who has not been able to prevent it (W.Va. Code §49-1-3(3)
- Co-petitioners are represented by separate counsel, not by the DHHR attorney

DISCOVERY OBLIGATIONS

- DHHR Counsel to provide discovery within three days of filing the Petition
- Statements of Respondents, if any
- Respondents' criminal histories, if any
- Documents, photographs, etc (any exhibits)
- Reports of any physical/mental health examinations or testing
- Medical records
- Witness list
- Request for reciprocal discovery