
WEST VIRGINIA CODE CHAPTER 48
ARTICLE 22

WV Legislature

PART 1. DEFINITIONS.

§48-22-101. Applicability of definitions.

For the purposes of this article the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in this article. These definitions are applicable unless a different meaning clearly appears from the context.

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§48-22-102. Abandonment defined.

"Abandonment" means any conduct by the birth mother, legal father, determined father, outsider father, unknown father or putative father that demonstrates a settled purpose to forego all duties and relinquish all parental claims to the child.

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§48-22-103. Adoptive parents, adoptive mother or adoptive father defined.

"Adoptive parents" or "adoptive mother" or "adoptive father" means those persons who, after adoption, are the mother and father of the child.

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§48-22-104. Agency defined.

"Agency" means a public or private entity, including the Department of Human Services, that is authorized by law to place children for adoption.

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§48-22-105. Birth father defined.

"Birth father" means the biological father of the child.

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§48-22-106. Birth mother defined.

"Birth mother" means the biological mother of the child.

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§48-22-107. Birth parents defined.

"Birth parents" mean both the biological father and the biological mother of the child.

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§48-22-108. Consent defined.

"Consent" means the voluntary surrender to an individual, not an agency, by a minor child's parent or guardian, for purposes of the child's adoption, of the rights of the parent or guardian with respect to the child, including the legal and physical custody of the child.

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§48-22-109. Determined father defined.

"Determined father" means, before adoption, a person: (1) In whom paternity has been established pursuant to the provisions of article 24-101, et seq., and section 16-5-12, whether by adjudication or acknowledgment as set forth therein; or (2) who has been otherwise judicially determined to be the biological father of the child entitled to parental rights; or (3) who has asserted his paternity of the child in an action commenced pursuant to the provisions of article 24-101, et seq., that is pending at the time of the filing of the adoption petition.

§48-22-110. Legal father defined.

"Legal father" means, before adoption, the male person having the legal relationship of parent to a child: (1) Who is married to its mother at the time of conception; or (2) who is married to its mother at the time of birth of the child; or (3) who is the biological father of the child and who marries the mother before an adoption of the child.

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§48-22-111. Marital child defined.

"Marital child" means a child born or conceived during marriage.

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§48-22-112. Nonmarital child defined.

"Nonmarital child" means a child not born or conceived during marriage.

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§48-22-113. Outsider father defined.

"Outsider father" means the biological father of a child born to or conceived by the mother while she is married to another man who is not the biological father of the child.

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§48-22-114. Putative father defined.

"Putative father" means, before adoption, any man named by the mother as a possible biological father of the child pursuant to the provisions of section 22-502, who is not a legal or determined father.

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§48-22-115. Relinquishment defined.

"Relinquishment" means the voluntary surrender to an agency by a minor child's parent or guardian, for purposes of the child's adoption, of the rights of the parent or guardian with respect to the child, including the legal and physical custody of the child.

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§48-22-116. Stepparent adoption defined.

"Stepparent adoption" means an adoption in which the petitioner for adoption is married to one of the birth parents of the child or to an adoptive parent of the child.

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§48-22-117. Unknown father defined.

"Unknown father" means a biological father whose identity the biological mother swears is unknown to her before adoption, pursuant to the provisions of section 22-502.

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§48-22-201. Persons who may petition for decree of adoption.

Any person not married or any person, with his or her spouse's consent, or any husband and wife jointly, may petition a circuit court of the county wherein such person or persons reside for a decree of adoption of any minor child or person who may be adopted by the petitioner or petitioners: *Provided*, That if the minor child to be adopted has been removed from a prior home due to an abuse or neglect proceeding, the petition may be filed in the same county as the original abuse and neglect proceeding regarding the minor child.

§48-22-301. Persons whose consent or relinquishment is required; exceptions.

(a) Subject to the limitations hereinafter set forth, consent to or relinquishment for adoption of a minor child is required of:

- (1) The parents or surviving parent of a marital child, whether adult or infant;
- (2) The outsider father of a marital child who has been adjudicated to be the father of the child or who has filed a paternity action which is pending at the time of the filing of the petition for adoption;
- (3) The birth mother of a nonmarital child, whether adult or infant; and
- (4) The determined father.

(b) Consent or relinquishment shall not be required of a parent or of any other person having custody of the adoptive child:

- (1) Whose parental rights have been terminated pursuant to the provisions of §49-4-114 of this code;
- (2) Whom the court finds has abandoned the child as set forth in §48-22-306 of this code; or
- (3) Who, in a stepparent adoption, is the birth parent or adoptive parent of the child and is married to the petitioning adoptive parent. In such stepparent adoption, the parent must assent to the adoption by joining as a party to the petition for adoption.

(c) If the mother, legal father, or determined father is under disability, the court may order the adoption if it finds:

- (1) The parental rights of the person are terminated, abandoned, or permanently relinquished;
- (2) The person is incurably insane; or
- (3) The disability arises solely because of age and an otherwise valid consent or relinquishment has been given.

(d) If all persons entitled to parental rights of the child sought to be adopted are deceased or have been deprived of the custody of the child by law, then consent or relinquishment is required of the legal guardian or of any other person having legal custody of the child at the time. If there is no legal guardian nor any person who has legal custody of the child, then consent or relinquishment is required from some discreet and suitable person appointed by the court to act as the next friend of the child in the adoption proceedings.

(e) If one of the persons entitled to parental rights of the child sought to be adopted is

deceased, only the consent or relinquishment of the surviving person entitled to parental rights is required.

(f) If the child to be adopted is 12 years of age or over, the consent of the child is required to be given in the presence of a judge of a court of competent jurisdiction, unless for extraordinary cause, the requirement of such consent is waived by the court.

(g) Any consent to adoption or relinquishment of parental rights shall have the effect of authorizing the prospective adoptive parents or the agency to consent to medical treatment for the child, whether or not such authorization is expressly stated in the consent or relinquishment.

§48-22-302. Timing and execution of consent or relinquishment.

(a) No consent or relinquishment may be executed before the expiration of seventy-two hours after the birth of the child to be adopted.

(b) A consent or relinquishment executed by a parent or guardian as required by the provisions of section 22-301 must be signed and acknowledged in the presence of one of the following:

(1) A judge of a court of record;

(2) A person whom a judge of a court of record designates to take consents or relinquishments;

(3) A notary public;

(4) A commissioned officer on active duty in the military service of the United States, if the person executing the consent or relinquishment is in military service; or

(5) An officer of the foreign service or a consular officer of the United States in another country, if the person executing the consent or relinquishment is in that country.

§48-22-303. Content of consent or relinquishment.

(a) A consent or relinquishment as required by the provisions of section 22-301 must be written in plain English or, if the person executing the consent or relinquishment does not understand English, in the person's primary language. The form of the consent or relinquishment shall include the following, as appropriate:

- (1) The date, place and time of the execution of the consent or relinquishment;
- (2) The name, date of birth and current mailing address of the person executing the consent or relinquishment;
- (3) The date, place of birth and the name or pseudonym ("Baby Boy _____ or Baby Girl _____") of the minor child;
- (4) The fact that the document is being executed more than seventy-two hours after the birth of the child;
- (5) If a consent, that the person executing the document is voluntarily and unequivocally consenting to the transfer of legal and physical custody to, and the adoption of the child by, an adoptive parent or parents whose name or names may, but need not be, specified;
- (6) If a relinquishment, that the person executing the relinquishment voluntarily consents to the permanent transfer of legal and physical custody of the child to the agency for the purposes of adoption;
- (7) If a consent, that it authorizes the prospective adoptive parents, or if a relinquishment, that it authorizes the agency, to consent to medical treatment of the child pending any adoption proceeding;
- (8) That after the consent or relinquishment is signed and acknowledged, it is final and, unless revoked in accordance with the provisions of section 22-305, it may not be revoked or set aside for any other reason;
- (9) That the adoption will forever terminate all parental rights, including any right to visit or communicate with the child and any right of inheritance;
- (10) That the adoption will forever terminate all parental obligations of the person executing the consent or relinquishment;
- (11) That the termination of parental rights and obligations is permanent whether or not any agreement for visitation or communication with the child is subsequently performed;
- (12) That the person executing the consent or relinquishment does so of his or her own free will and the consent or relinquishment has not been obtained by fraud or duress;

(13) That the person executing the consent or relinquishment has:

- (i) Received a copy of the consent or relinquishment;
- (ii) Been provided the information and afforded the opportunity to participate in the voluntary adoption registry, pursuant to the provisions of article 23-101, et seq.;
- (iii) Been advised of the availability of counseling;
- (iv) Been advised of the consequences of misidentifying the other birth parent; and
- (v) If a birth mother, been advised of the obligation to provide the information required by the provisions of section seven of this article in the case of an unknown father;

(14) That the person executing the consent or relinquishment has not received or been promised any money or anything of value for the consent or relinquishment, other than payments authorized by the provisions of section fourteen-h, article two, chapter sixty-one;

(15) Whether the child is an "Indian child" as defined in the Indian Child Welfare Act, 25 U.S.C. §1903;

(16) That the person believes the adoption of the child is in the child's best interest; and

(17) That the person who is consenting or relinquishing expressly waives notice of any proceeding for adoption unless the adoption is contested, appealed or denied.

(b) A consent or relinquishment may provide explicitly for its conditional revocation if:

(1) Another person whose consent or relinquishment is required does not execute the same within a specified period;

(2) A court determines not to terminate another person's parental relationship to the child; or

(3) In a direct placement for adoption, a petition for adoption by a prospective adoptive parent, named or described in the consent, is denied or withdrawn.

(c) A consent or relinquishment shall also include:

(1) If a consent, the name, address, telephone and facsimile numbers of the lawyer representing the prospective adoptive parents; or

(2) If a relinquishment, the name, address, telephone and facsimile numbers of the agency to which the child is being relinquished; and

(3) Specific instructions on how to revoke the consent or relinquishment.

§48-22-304. Consent or relinquishment by infants.

If a person who has executed a consent to or relinquishment for adoption is under eighteen years of age at the time of the filing of the petition, and such infant parent is a resident of the state, the consent or relinquishment shall be specifically reviewed and approved by the court and a guardian ad litem may be appointed to represent the interests of the infant parent. The guardian ad litem shall conduct a discreet inquiry regarding the consent or relinquishment given, and may inquire of any person having knowledge of the consent or relinquishment. If the guardian ad litem finds reasonable cause to believe that the consent or relinquishment was obtained by fraud or duress, the court may request the infant parent to appear before the court or at a deposition, so that inquiry may be made regarding the circumstances surrounding the execution of the consent or relinquishment. The failure of the court to appoint a guardian ad litem is not grounds for setting aside a decree of adoption.

§48-22-305. Revocation of consent or relinquishment for adoption.

(a) Parental consent or relinquishment, whether given by an adult or minor, may be revoked only if:

(1) The person who executed the consent or relinquishment and the prospective adoptive parent named or described in the consent or the lawyer for said adoptive parent, or the agency in case of relinquishment, agree to its revocation prior to the entry of an adoption order; or

(2) The person who executed the consent or relinquishment proves by clear and convincing evidence, in an action filed either within six months of the date of the execution of the consent or relinquishment or prior to the date an adoption order is final, whichever date is later, that the consent or relinquishment was obtained by fraud or duress; or

(3) The person who executed the consent or relinquishment proves by a preponderance of the evidence, prior to the entry of an adoption order, that a condition allowing revocation as expressly set forth in the consent or relinquishment has occurred; or

(4) The person who executed the consent or relinquishment proves by clear and convincing evidence, prior to the entry of an adoption order, that the consent or relinquishment does not comply with the requirements set forth in this article.

(b) If the custody of a child during the pendency of a petition to revoke a consent or relinquishment is in issue, the court shall conduct a hearing, within thirty days of service of notice upon the respondent, to determine the issue of temporary custody. The court shall award such custody based upon the best interests of the child.

§48-22-306. Conduct presumptively constituting abandonment.

(a) Abandonment of a child over the age of six months shall be presumed when the birth parent:

- (1) Fails to financially support the child within the means of the birth parent; and
- (2) Fails to visit or otherwise communicate with the child when he or she knows where the child resides, is physically and financially able to do so and is not prevented from doing so by the person or authorized agency having the care or custody of the child: Provided, That such failure to act continues uninterrupted for a period of six months immediately preceding the filing of the adoption petition.

(b) Abandonment of a child under the age of six months shall be presumed when the birth father:

- (1) Denounces the child's paternity any time after conception;
- (2) Fails to contribute within his means toward the expense of the prenatal and postnatal care of the mother and the postnatal care of the child;
- (3) Fails to financially support the child within father's means; and
- (4) Fails to visit the child when he knows where the child resides: Provided, That such denunciations and failure to act continue uninterrupted from the time that the birth father was told of the conception of the child until the time the petition for adoption was filed.

(c) Abandonment of a child shall be presumed when the unknown father fails, prior to the entry of the final adoption order, to make reasonable efforts to discover that a pregnancy and birth have occurred as a result of his sexual intercourse with the birth mother.

(d) Notwithstanding any provision in this section to the contrary, any birth parent shall have the opportunity to demonstrate to the court the existence of compelling circumstances preventing said parent from supporting, visiting or otherwise communicating with the child: Provided, That in no event may incarceration provide such a compelling circumstance if the crime resulting in the incarceration involved a rape in which the child was conceived.

PART 4. DELIVERY OF CHILD FOR ADOPTION.

§48-22-401. Delivery of child for adoption; written recital of circumstances.

Whenever a person delivers a child for adoption the person first receiving such child and the prospective adopting parent or parents shall be entitled to receive from such person a written recital of all known circumstances surrounding the birth, medical and family medical history of the child, and an itemization of any facts or circumstances unknown concerning the child's parentage or that may require further development in the form of an affidavit from the birth mother consistent with the provisions of section 22-502.

§48-22-501. Filing of petition for adoption.

The petition for adoption may be filed at any time after the child who is the subject of the adoption is born, the adoptive placement determined and all consents or relinquishments that can be obtained have been executed. The hearing on the petition may be held only after the child has lived with the adoptive parent or parents for a period of six months, proper notice of the petition has been given and all necessary consents or relinquishments have been executed and submitted or the rights of all nonconsenting birth parents have otherwise been terminated.

§48-22-502. Petition and appendix.

(a) The petition shall be verified and set forth:

(1) The name, age, and place of residence of the petitioner or petitioners, and of the child, and the name by which the child is known;

(2) Whether such child is possessed of any property and a full description of the property, if any;

(3) Whether the petitioner or petitioners know the identity of the persons entitled to parental rights or, that the persons are unknown to the petitioner or petitioners;

(4) Whether and on what basis the parental rights of any birth parents should be terminated during the pendency of the adoption petition;

(5) If the parental rights of one or more of the child's birth parents have been terminated by a final order or orders of a court of competent jurisdiction, that the final order or orders terminating the parental rights of the child's birth parents have either: (1) Been affirmed on appeal and the time for reconsideration of the decision on appeal has expired; or (2) not been appealed and the time for filing of an appeal of the order or orders terminating the parental rights of the child's birth parents has expired; and

(6) A copy of the Department of Human Services' certificate issued under §49-4-117 of this code.

(b) In the case of an unknown father, an affidavit signed by the birth mother setting forth the following information must be attached to the petition:

(1) Whether the birth mother was married at the probable time of conception of the child, or at a later time, and if so, the identity and last known address of such man;

(2) Whether the birth mother was cohabiting with a man at the probable time of conception of the child, and if so, the identity of such man, his last known address and why the woman contends that such man is not the biological father of the child;

(3) Whether the birth mother has received payments or promise of support from any man with respect to the child or her pregnancy, and if so, the identity of such man, his last known address and why the birth mother contends that such man is not the biological father of the child;

(4) Whether the birth mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance, and if so, the identity of such man, his last known address and why the birth mother contends such man is not the biological father of the child;

(5) Whether the birth mother identified any man as the father to any hospital personnel, and if so, the identity of such man, his last known address, the name and address of the hospital and why the birth mother now contends such man is not the biological father of the child;

(6) Whether the birth mother has informed any man that he may be the biological father of the child, and if so, the identity of such man, his last known address and why the birth mother now contends such man is not the biological father of the child;

(7) Whether any man has formally or informally acknowledged or claimed paternity of the child in any jurisdiction at the time of the inquiry, and if so, the identity of such man, his last known address and why the birth mother contends such man is not the biological father of the child;

(8) That the birth mother has been advised that the failure to identify or the misidentification of the birth father can result in delays and disruptions in the processing of the adoption petition;

(9) That the birth mother has been informed that her statement concerning the identity of the father will be used only for the limited purposes of adoption and that once the adoption is complete, such identity will be sealed; and

(10) That the birth mother has been advised of the remedies available to her for protection against domestic violence pursuant to the provisions of §48-27-101 *et seq.* of this code.

(c) In the event the birth mother is deceased or her identity or whereabouts are unknown, no such affidavit shall be required.

(d) The affidavit of the birth mother in the case of an unknown father shall be executed before any person authorized to witness a consent or relinquishment pursuant to the provisions of §48-22-302 of this code. Any affidavit filed with the petition pursuant to the provisions of this section shall be sealed in the court file and may not be opened except by court order upon a showing of good cause.

(e) If the person petitioning for adoption is less than 15 years older than the child sought to be adopted, such fact shall be set forth specifically in the petition. In such case, the court shall grant the adoption only upon a specific finding that, notwithstanding the differences in age of the petitioner and the child, such adoption is in the best interest of the child: *Provided*, That in the case of a stepparent adoption, such specific finding shall not be required and an adoption shall not be denied on the sole basis of proximity in age.

(f) The petition shall set forth any facts concerning the circumstances of the birth of the child known to the petitioner or petitioners. An effort shall be made to obtain medical and social information, which information, along with all nonidentifying information about the birth, shall accompany the petition and be made a part of the nonidentifying information to be sealed in the court file.

(g) Either the petition, the various consents or relinquishments attached thereto or filed in the cause, the affidavit of the birth mother as set forth herein or in an appendix signed by counsel or other credible persons shall fully disclose all that is known about the parentage of the child.

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PART 6. NOTICE OF PROCEEDING FOR ADOPTION.

§48-22-601. Who shall receive notice.

(a) Unless notice has been waived, notice of a proceeding for adoption of a child must be served, within twenty days after a petition for adoption is filed, upon:

(1) Any person whose consent to the adoption is required pursuant to the provisions of section 22-301, but notice need not be served upon a person whose parental relationship to the child or whose status as a guardian has been terminated;

(2) Any person whom the petitioner knows is claiming to be the father of the child and whose paternity of the child has been established pursuant to the provisions of 24-101, et seq.;

(3) Any person other than the petitioner who has legal or physical custody of the child or who has visitation rights with the child under an existing court order issued by a court in this or another state;

(4) The spouse of the petitioner if the spouse has not joined in the petition; and

(5) A grandparent of the child if the grandparent's child is a deceased parent of the child and, before death, the deceased parent had not executed a consent or relinquishment or the deceased parent's parental relationship to the child had not been otherwise terminated.

(b) The court shall require notice of a proceeding for adoption to be served upon any person the court finds, at any time during the proceeding, is:

(1) A person described in subsection (a) of this section who has not been given notice;

(2) A person who has revoked consent or relinquishment pursuant to the provisions of section 22-305; or

(3) A person who, on the basis of a previous relationship with the child, a parent, an alleged parent or the petitioner, can provide relevant information that the court, in its discretion, wants to hear.

§48-22-602. How notice is to be served.

(a) Notice shall be served on each person as required under the provisions of section 22-601, in accordance with rule 4 of the West Virginia rules of civil procedure, except as otherwise provided in this article.

(b) The notice shall inform the person, in plain language, that his or her parental rights, if any, may be terminated in the proceeding and that such person may appear and defend any such rights within the required time after such service. The notice shall also provide that if the person upon whom notice is properly served fails to respond within the required time after its service, said person may not appear in or receive further notice of the adoption proceedings.

(c) In the case of any person who is a nonresident or whose whereabouts are unknown, service shall be achieved: (1) By personal service; (2) by registered or certified mail, return receipt requested, postage prepaid, to the person's last known address, with instructions to forward; or (3) by publication. If personal service is not achieved and the person giving notice has any knowledge of the whereabouts of the person to be served, including a last known address, service by mail shall be first attempted as provided herein. Any service achieved by mail shall be complete upon mailing and shall be sufficient service without the need for notice by publication. In the event that no return receipt is received giving adequate evidence of receipt of the notice by the addressee or of receipt of the notice at the address to which the notice was mailed or forwarded, or if the whereabouts of the person is unknown, then the person required to give notice shall cause service of notice by publication as a Class II publication in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area shall be the county where the proceedings are had, and in the county where the person to be served was last known to reside, except in cases of foreign adoptions where the child is admitted to this country for purposes of adoptive placement and the United States immigration and naturalization service has issued the foreign-born child a visa or unless good cause is shown for not publishing in the county where the person was last known to reside. The notice shall state the court and its address but not the names of the adopting parents or birth mother, unless the court so orders.

(d) In the case of a person under disability, service shall be made on the person and his or her personal representative, or if there be none, on a guardian ad litem.

(e) In the case of service by publication or mail or service on a personal representative or a guardian ad litem, the person shall be allowed thirty days from the date of the first publication or mailing or of such service on a personal representative or guardian ad litem in which to appear and defend his or her parental rights.

§48-22-603. Notice to an unknown father.

(a) In the case of an unknown father, the court shall inspect the affidavit submitted pursuant to the provisions of section 22-502, consider any additional evidence that the court, in its discretion, determines should be produced, and determine whether said father can be identified. The inspection and consideration of any additional evidence by the court shall be accomplished as soon as practicable after the filing of the petition, but no later than sixty days before the final hearing on the adoption petition.

(b) If the court identifies a father pursuant to the provisions of subsection (a) of this section, then notice of the proceeding for adoption shall be served on the father so identified in accordance with the provisions of section 22-602.

(c) If after consideration of the affidavit and/or the consideration of further evidence, the court finds that proper service cannot be made upon the father because his identity is unknown, the court shall order publication of the notice only if, on the basis of all information available, the court determines that publication is likely to lead to receipt of notice by the father. If the court determines that publication or posting is not likely to lead to receipt of notice, the court may dispense with the publication or posting of a notice.

PART 7. PROCEDURES FOR ADOPTION.

§48-22-701. Proceedings.

(a) When the cause has matured for hearing but not sooner than six months after the child has resided continuously in the home of the petitioner or petitioners, the court shall decree the adoption if:

- (1) It determines that no person retains parental rights in such child except the petitioner and the petitioner's spouse, or the joint petitioners;
- (2) That all applicable provisions of this article have been complied with;
- (3) That the petitioner is, or the petitioners are, fit persons to adopt the child; and
- (4) That it is in the best interests of the child to order such adoption.

(b) The court or judge thereof may adjourn the hearing of such petition or the examination of the parties in interest from time to time, as the nature of the case may require. Between the time of the filing of the petition for adoption and the hearing thereon, the court or judge thereof shall, unless the court or judge otherwise directs, cause a discreet inquiry to be made to determine whether such child is a proper subject for adoption and whether the home of the petitioner or petitioners is a suitable home for such child. Any such inquiry, if directed, shall be made by any suitable and discreet person not related to either the persons previously entitled to parental rights or the adoptive parents, or by an agency designated by the court, or judge thereof, and the results thereof shall be submitted to the court or judge thereof prior to or upon the hearing on the petition and shall be filed with the records of the proceeding and become a part thereof. The report shall include, but not be limited to, the following:

- (1) A description of the family members, including medical and employment histories;
- (2) A physical description of the home and surroundings;
- (3) A description of the adjustment of the child and family;
- (4) Personal references; and
- (5) Other information deemed necessary by the court, which may include a criminal background investigation.

(c) If it shall be necessary, under the provisions of this article, that a discreet and suitable person shall be appointed to act as the next friend of the child sought to be adopted, then and in that case the court or judge thereof shall order a notice of the petition and of the time and place when and where the appointment of next friend will be made, to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-

nine of this code, and the publication area for such publication shall be the county where such court is located. At the time and place so named and upon due proof of the publication of such notice, the court or judge thereof shall make such appointment, and shall thereupon assign a day for the hearing of such petition and the examination of the parties interested.

(d) Upon the day so assigned, the court or judge thereof shall proceed to a final hearing of the petition and examination of the parties in interest, under oath, and of such other witnesses as the court or judge thereof may deem necessary to develop fully the standing of the petitioners and their responsibility, and the status of the child sought to be adopted; and if the court or judge thereof shall be of the opinion from the testimony that the facts stated in the petition are true, and if upon examination the court or judge thereof is satisfied that the petitioner is, or the petitioners are, of good moral character, and of respectable standing in the community, and are able properly to maintain and educate the child sought to be adopted, and that the best interests of the child would be promoted by such adoption, then and in such case the court or judge thereof shall make an order reciting the facts proved and the name by which the child shall thereafter be known, and declaring and adjudging that from the date of such order, the rights, duties, privileges and relations, theretofore existing between the child and those persons previously entitled to parental rights, shall be in all respects at an end, and that the rights, duties, privileges and relations between the child and his or her parent or parents by adoption shall thenceforth in all respects be the same, including the rights of inheritance, as if the child had been born to such adopting parent or parents in lawful wedlock, except only as otherwise provided in this article: Provided, That no such order shall disclose the names or addresses of those persons previously entitled to parental rights.

§48-22-702. Recordation of order; fees; disposition of records; names of adopting parents and persons previously entitled to parental rights not to be disclosed; disclosure of identifying and nonidentifying information; certificate for state registrar of vital statistics; birth certificate.

(a) The order of adoption shall be recorded in a book kept for that purpose, and the clerk shall receive the same fees as in other cases. All records of proceedings in adoption cases and all papers and records relating to such proceedings shall be kept in the office of the clerk of the circuit court in a sealed file, which file shall be kept in a locked or sealed cabinet, vault or other container and shall not be open to inspection or copy by anyone, except as otherwise provided in this article, or upon court order for good cause shown. No person in charge of adoption records shall disclose the names of the adopting parent or parents, the names of persons previously entitled to parental rights, or the name of the adopted child, except as otherwise provided in this article, or upon court order for good cause shown. The clerk of the court keeping and maintaining the records in adoption cases shall keep and maintain an index of such cases separate and distinct from all other indices kept or maintained by him or her, and the index of adoption cases shall be kept in a locked or sealed cabinet, vault or other container and shall not be open to inspection or copy by anyone, except as otherwise provided in this article, or upon court order for good cause shown. Nonidentifying information, the collection of which is provided for in article 23-101, et seq., of this chapter, shall be provided to the adoptive parents as guardians of the adopted child, or to the adult adoptee, by their submitting a duly acknowledged request to the clerk of the court. The clerk may charge the requesting party for copies of any documents, as provided in section eleven, article one, chapter fifty-nine of this code. Either birth parent may from time to time submit additional social, medical or genetic history for the adoptee, which information shall be placed in the court file by the clerk, who shall bring the existence of this medical information to the attention of the court. The court shall immediately transmit all such nonidentifying medical, social or genetic information to the adoptive parents or the adult adoptee.

(b) If an adoptee, or parent of a minor adoptee, is unsuccessful in obtaining identifying information by use of the mutual consent voluntary adoption registry provided for in 23-101, et seq., identifying information may be sought through the following process:

(1) Upon verified petition of an adoptee at least eighteen years of age, or, if less than eighteen, his or her adoptive parent or legal guardian, the court may also attempt, either itself, or through its designated agent, to contact the birth parents, if known, to obtain their consent to release identifying information to the adoptee. The petition shall state the reasons why the adoptee desires to contact his or her birth parents, which reasons shall be disclosed to the birth parents if contacted. The court and its agent shall take any and all care possible to assure that none but the birth parents themselves are informed of the adoptee's existence in relationship to them. The court may appoint the bureau of children and families, or a private agency which provides adoption services in accordance with standards established by law, to contact birth parents as its designated agent, the said agent shall report to the

court the results of said contact.

(2) Upon the filing of a verified petition as provided in subdivision (1) of this subsection, should the court be unable to obtain consent from either of the birth parents to release identifying information, the court may release such identifying information to the adoptee, or if a minor, the adoptee's parents or guardian, after notice to the birth parents and a hearing thereon, at which hearing the court must specifically find that there exists evidence of compelling medical or other good cause for release of such identifying information.

(c) Identifying information may only be obtained with the duly acknowledged consent of the mother or the legal or determined father who consented to the adoption or whose rights were otherwise relinquished or terminated, together with the duly acknowledged consent of the adopted child upon reaching majority, or upon court order for good cause shown. Any person previously entitled to parental rights may from time to time submit additional social or medical information which, notwithstanding other provisions of this article, shall be inserted into the record by the clerk of the court.

(d) Immediately upon the entry of such order of adoption, the court shall direct the clerk thereof forthwith to make and deliver to the state registrar of vital statistics a certificate under the seal of said court, showing:

- (1) The date and place of birth of the child, if known;
- (2) The name of the mother of the child, if known, and the name of the legal or determined father of the child, if known;
- (3) The name by which said child has previously been known;
- (4) The names and addresses of the adopting parents;
- (5) The name by which the child is to be thereafter known; and
- (6) Such other information from the record of the adoption proceedings as may be required by the law governing vital statistics and as may enable the state registrar of vital statistics to carry out the duties imposed upon him or her by this section.

(e) Upon receipt of the certificate, the registrar of vital statistics shall forthwith issue and deliver by mail to the adopting parents at their last-known address and to the clerk of the county commission of the county wherein such order of adoption was entered a birth certificate in the form prescribed by law, except that the name of the child shown in said certificate shall be the name given him or her by the order of adoption. The clerk shall record such birth certificate in the manner set forth in section twelve, article five, chapter sixteen of this code.

§48-22-703. Effect of order as to relations of parents and child and as to rights of inheritance; intestacy of adopted child.

(a) Upon the entry of such order of adoption, any person previously entitled to parental rights, any parent or parents by any previous legal adoption, and the lineal or collateral kindred of any such person, parent or parents, except any such person or parent who is the husband or wife of the petitioner for adoption, shall be divested of all legal rights, including the right of inheritance from or through the adopted child under the statutes of descent and distribution of this state, and shall be divested of all obligations in respect to the said adopted child, and the said adopted child shall be free from all legal obligations, including obedience and maintenance, in respect to any such person, parent or parents. From and after the entry of such order of adoption, the adopted child shall be, to all intents and for all purposes, the legitimate issue of the person or persons so adopting him or her and shall be entitled to all the rights and privileges and subject to all the obligations of a natural child of such adopting parent or parents.

(b) For the purpose of descent and distribution, from and after the entry of such order of adoption, a legally adopted child shall inherit from and through the parent or parents of such child by adoption and from or through the lineal or collateral kindred of such adopting parent or parents in the same manner and to the same extent as though said adopted child were a natural child of such adopting parent or parents, but such child shall not inherit from any person entitled to parental rights prior to the adoption nor their lineal or collateral kindred, except that a child legally adopted by a husband or wife of a person entitled to parental rights prior to the adoption shall inherit from such person as well as from the adopting parent. If a legally adopted child shall die intestate, all property, including real and personal, of such adopted child shall pass, according to the statutes of descent and distribution of this state, to those persons who would have taken had the decedent been the natural child of the adopting parent or parents.

§48-22-704. Finality of order; challenges to order of adoption.

- (a) An order or decree of adoption is a final order for purposes of appeal to the Supreme Court of Appeals on the date when the order is entered. An order or decree of adoption for any other purpose is final upon the expiration of the time for filing an appeal when no appeal is filed or when an appeal is not timely filed, or upon the date of the denial or dismissal of any appeal which has been timely filed.
- (b) An order or decree of adoption may not be vacated, on any ground, if a petition to vacate the judgment is filed more than six months after the date the order is final.
- (c) If a challenge is brought within the six-month period by an individual who did not receive proper notice of the proceedings pursuant to the provisions of this article, the court shall deny the challenge, unless the individual proves by clear and convincing evidence that the decree or order is not in the best interest of the child.
- (d) A decree or order entered under this article may not be vacated or set aside upon application of a person who waived notice, or who was properly served with notice pursuant to this article and failed to respond or appear, file an answer or file a claim of paternity within the time allowed.
- (e) A decree or order entered under this article may not be vacated or set aside upon application of a person alleging there is a failure to comply with an agreement for visitation or communication with the adopted child: Provided, That the court may hear a petition to enforce the agreement, in which case the court shall determine whether enforcement of the agreement would serve the best interests of the child. The court may, in its sole discretion, consider the position of a child of the age and maturity to express such position to the court.
- (f) The Supreme Court of Appeals shall consider and issue rulings on any petition for appeal from an order or decree of adoption and petitions for appeal from any other order entered pursuant to the provisions of this article as expeditiously as possible. The circuit court shall consider and issue rulings on any petition filed to vacate an order or decree of adoption and any other pleadings or petitions filed in connection with any adoption proceeding as expeditiously as possible.
- (g) When any minor has been adopted, he or she may, within one year after becoming of age, sign, seal and acknowledge before proper authority, in the county in which the order of adoption was made, a dissent from such adoption, and file such instrument of dissent in the office of the clerk of the circuit court which granted said adoption. The clerk of the county commission of such county and the circuit clerk shall record and index the same. The adoption shall be vacated upon the filing of such instrument of dissent.

PART 8. MISCELLANEOUS PROVISIONS.

§48-22-801. Adoption of adults.

Any adult person who is a resident of West Virginia may petition the circuit court or any other court of record having jurisdiction of adoption proceedings for permission to adopt one who has reached the age of eighteen years or over, and, if desired, to change the name of such person. The consent of the person to be adopted shall be the only consent necessary. The order of adoption shall create the same relationship between the adopting parent or parents and the person adopted and the same rights of inheritance as in the case of an adopted minor child. If a change in name is desired, the adoption order shall so state.

§48-22-802. Contracts limiting or restraining adoptions.

Any contract, agreement or stipulation which endeavors to deny to any person or persons the right to petition for adoption of any person, or which endeavors to alter the time or manner of adoption as provided in this article, is contrary to the public policy of the state and such portion of any contract, agreement or stipulation is null and void and of no effect.

WV Legislature

§48-22-803.

Repealed.

Acts, 2011 Reg. Sess., Ch. 51.

WV Legislature

PART 9. INTERNATIONAL ADOPTIONS.

§48-22-901. Recognition of foreign adoption decree.

When an adoption occurs in a foreign country and the adopted child has immigrated to the United States with the permission of the United States, this state shall recognize the adoption. The rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the adoption decree was issued by a court of this state.

§48-22-902. Filing of petition for recognition of foreign adoption decree.

(a) At any time after the child has immigrated to the United States, the adoptive parent or parents may commence proceedings with the circuit court in their county of residence to have the foreign adoption decree recognized by filing a petition for recognition of foreign adoption decree. The verified petition shall set forth the following:

- (1) The name and address of the petitioner or petitioners;
 - (2) The name of the child adopted in a foreign country;
 - (3) The name by which the child shall be known henceforth;
 - (4) The child's country of origin and date of birth, if known;
 - (5) That the child has been issued a visa or other document authorizing entry into the United States and the date of entry. A copy of such a document shall be attached to the petition;
 - (6) That a home study of the petitioner or petitioners was prepared. A copy of the same shall be attached to the petition;
 - (7) The date on which the adoption was decreed in the foreign country. A copy of the foreign adoption decree or such other document or documents which evidence finalization of the adoption in the foreign country shall be attached to the petition, along with an English translation thereof.
- (b) The verified petition may set forth requests for specific relief or findings to meet the best interests of the child which may be granted, in the court's discretion, specifically including, but not limited to, a revised birth date if a physician has recommended a revision of the child's birth date.

§48-22-903. Proceedings for recognition of foreign adoption decree.

The court shall review the petition and accompanying documentation and, if the court finds the petition and documentation to be satisfactory, it shall enter an order of adoption stating that the documentation required has been submitted and is satisfactory and that the adoption must be recognized in West Virginia and shall have the same force and effect as if the decree of adoption was granted in accordance with the provisions of the West Virginia adoption act. The order shall further set forth the name by which the child shall be known henceforth and such other pertinent findings of the court. The court shall enter the order without the necessity of a hearing unless it deems a hearing necessary or a hearing is requested. The provisions of subsections (a), (d) and (e), section seven hundred two of this article shall apply to all orders issued hereunder and a new birth certificate shall be issued forthwith.