WEST VIRGINIA CODE: §49-4-114

§49-4-114. Consent by agency or department to adoption of child; statement of relinquishment by parent; counseling services; petition to terminate parental rights; notice; hearing; court orders.

(a)(1) Whenever a child welfare agency licensed to place children for adoption or the Department of Human Services has been given the permanent legal and physical custody of any child and the rights of the mother and the rights of the legal, determined, putative, outside or unknown father of the child have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency or the department may consent to the adoption of the child, pursuant to article twenty-two, chapter forty-eight of this code.

(2) Relinquishment for an adoption to an agency or to the department is required of the same persons whose consent or relinquishment is required, under section three hundred one, article twenty-two, chapter forty-eight of this code. The form of any relinquishment so required shall conform as nearly as practicable to the requirements established in section three hundred three, article twenty-two, chapter forty-eight, and all other provisions of that article providing for relinquishment for adoption shall govern the proceedings herein.

(3) For purposes of any placement of a child for adoption by the department, the department shall first consider the suitability and willingness of any known grandparent or grandparents to adopt the child. Once grandparents who are interested in adopting the child have been identified, the department shall conduct a home study evaluation, including home visits and individual interviews by a licensed social worker. If the department determines, based on the home study evaluation, that the grandparents would be suitable adoptive parents, it shall assure that the grandparents are offered the placement of the child prior to the consideration of any other prospective adoptive parents. A circuit judge may determine the placement of a child for adoption by a grandparent or grandparents is in the best interest of the child without the grandparent or grandparents completing or passing a home study evaluation.

(4) The department shall make available, upon request, for purposes of any private or agency adoption proceeding, preplacement and post-placement counseling services by persons experienced in adoption counseling, at no cost, to any person whose consent or relinquishment is required pursuant to article twenty-two, chapter forty-eight of this code.

(b)(1) Whenever the mother has executed a relinquishment, pursuant to this section, and the legal, determined, putative, outsider father, or unknown father, as those terms are defined pursuant to part one, article twenty-two, chapter forty-eight of this code, has not executed a relinquishment, the child welfare agency or the department may, by verified petition, seek to have the father's rights terminated based upon the grounds of abandonment or neglect of the child. Abandonment may be established in accordance with section three hundred six,

WV Legislature

article twenty-two, chapter forty-eight of this code.

(2) Unless waived by a writing acknowledged as in the case of deeds or by other proper means, notice of the petition shall be served on any person entitled to parental rights of a child prior to its adoption who has not signed a relinquishment of custody of the child.

(3) In addition, notice shall be given to any putative, outsider father, or unknown father who has asserted or exercised parental rights and duties to and with the child and who has not relinquished any parental rights, and the rights have not otherwise been terminated, or who has not had reasonable opportunity before or after the birth of the child to assert or exercise those rights, except that if the child is more than six months old at the time the notice would be required and the father has not asserted or exercised his or her parental rights and he or she knew the whereabouts of the child, then the father shall be presumed to have had reasonable opportunity to assert or exercise any rights.

(c)(1) Upon the filing of the verified petition seeking to have the parental rights terminated, the court shall set a hearing on the petition. A copy of the petition and notice of the date, time, and place of the hearing on the petition shall be personally served on any respondent at least twenty days prior to the date set for the hearing.

(2) The notice shall inform the person that his or her parental rights, if any, may be terminated in the proceeding and that the person may appear and defend any rights within twenty days of the service. In the case of a person who is a nonresident or whose whereabouts are unknown, service shall be achieved: (A) By personal service; (B) by registered or certified mail, return receipt requested, postage prepaid, to the person's last known address, with instructions to forward; or (C) by publication. If personal service is not acquired, then if 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 herein provided. Service achieved by mail shall be complete upon mailing and is 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 are unknown, then the person required to give notice shall file with the court an affidavit setting forth the circumstances of any attempt to serve the notice by mail, and the diligent efforts to ascertain the whereabouts of the person to be served. If the court determines that the whereabouts of the person to be served cannot be ascertained and that due diligence has been exercised to ascertain the person's whereabouts, then the court shall order service of the notice by publication as a Class II publication in compliance with 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. 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, a guardian ad litem.

(3) In the case of service by publication or mail or service on a personal representative or a guardian ad litem, the person is allowed thirty days from the date of the first publication or

WV Legislature

mailing of the service on a personal representative or guardian ad litem in which to appear and defend the parental rights.

(d) A petition under this section may be instituted in the county where the child resides or where the child is living.

(e) If the court finds that the person certified to parental rights is guilty of the allegations set forth in the petition, the court shall enter an order terminating his or her parental rights and shall award the legal and physical custody and control of the child to the petitioner.

WV Legislature