

Summary Sheet

About Child Abuse & Neglect Petitions: Co-Petitioning and Battered Parent Adjudication

This document was developed by the WCADV Domestic Violence/Child Victimization Study and Policy Workgroup in collaboration with the WV Department of Health and Human Resources Division of Training. The document is designed to be informational and does not constitute legal advice.

Co-Petitions

What is a co-petition?

- A petition to the circuit court in a child abuse and neglect proceeding.
- The DHHR and non-offending parent are listed as co-petitioners.
- The offending parent is listed at the respondent.
- CPS policy supports the use of co-petitions (effective June 1, 2006) where previously petitions were not filed when there was a protective parent

When can a co-petition be used?

- When CPS investigation reveals abuse and neglect of a child by a parent sufficient to warrant a circuit court child abuse and neglect petition, and the other parent is non-offending.
- A non-offending parent is a parent who did not directly threaten or harm the child, did not condone the abuse or harm to the child and took such steps to protect the child which were reasonable given the threat of harm to the adult victim (in domestic violence cases).
- DHHR policy states that co-petitions should be considered first with every case that rises to the level of a petition.
- Both DHHR and the non-offending parent must agree to file the co-petition.
- DHHR cannot force the non-offending victim to file a co-petition
- The circuit court can order DHHR to co-petition with a non-offending parent if the non-offending parent files the petition (through the prosecutor without DHHR) and the judge finds the petition has merit.
- Any reasonable person can co-petition.

How is the co-petition filed?

- DHHR files the co-petition through the prosecuting attorney
- Separate verifications are filed by DHHR and the co-petitioner (they do not have to agree on the verifications)
- Imminent danger language should not be used in the filing of the co-petition— with co-petitions legal and physical custody remain with the non-offending parent
- After the co-petition is filed in circuit court, the co-petitioner, if they are a non-offending parent, can be appointed an attorney separate from the respondent's attorney (the prosecutor represents DHHR)

- If DHHR becomes aware that the co-petitioner is an offending parent, the petition can be amended to make the former co-petitioner (now offending parent) the respondent. Some practitioners are hesitant to co-petition fearing that their may be undiscovered concerns about the co-petitioner. When physical custody is with a parent, whether in a co-petition or a petition where the parent with physical custody is named as a respondent, an amended petition must be filed for DHHR to change physical custody.

Battered Parent Adjudication

What is Battered Parent Adjudication?

- "Battered parent" means a parent, guardian or other custodian who has been judicially determined not to have condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code, which domestic violence was perpetrated by the person or persons determined to have abused or neglected the child or children
- The judicial ruling is made in a child abuse and neglect proceeding in circuit court
- The batterer has to be the person abusing the adult victim and creating the harm to the child giving rise to the petition.

When would battered parent adjudication apply?

- When a non-offending parent has been a victim of domestic violence (defined by section two hundred two, article twenty-seven, chapter forty-eight of WV code), is unwilling (due to fear or other reasons) to co-petition with DHHR and a CPS investigation reveals that a child abuse and neglect petition is needed.

How is a battered parent adjudication made?

- The DHHR is named as the petitioner and the adult victim and the batterer are both named as the respondents.
- DHHR can request a battered parent adjudication when filing the abuse and neglect petition
- The attorney representing the adult victim of domestic violence can make a case for battered parent adjudication if the DHHR has named the adult victim as a respondent in the abuse and neglect petition
- If a battered parent is initially adjudicated abusing/neglecting and then facts of the domestic violence become evident (that were not evident at the time of adjudication), the adjudication can be changed to battered parent.
- TPR for adjudicated battered parent happens only if parenting skills are impaired and the parent refuses or is unable to cooperate with a reasonable treatment plan.