

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #8

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Child Support Enforcement Division TITLE NUMBER: 97

CITE AUTHORITY W. Va. Code 9-2-6

AMENDMENT TO AN EXISTING RULE: YES X NO

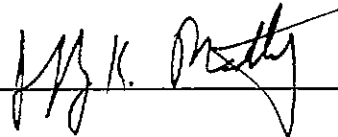
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 78 -1

TITLE OF RULE BEING AMENDED: Incorporation by Reference as a
Legislative Rule of the Child Support Enforcement Division Policy
and Procedure Manual

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



3.40

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Martha J. Hill, Director

LEGISLATIVE RULE TITLE: Incorporation By Reference as a Legislative Rule
of the Child Support Enforcement Division Policy and Procedural Manual.

1. Authorizing statute(s) citation _____

W. Va. Code 9-2-6

2. a. Date filed in State Register with Notice of Hearing

7/25/96

b. What other notice, including advertising, did you give
of the hearing?

N/A

c. Date of Hearing(s) 8/26/96

d. Attach list of persons who appeared at hearing,
comments received, amendments, reasons for amendments.

Attached _____ No comments received X

e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing:
(be exact)

8/30/96

f. Name and phone number(s) of agency person(s) to
contact for additional information:

R. Jeffrey Johnson

CHILD SUPPORT ENFORCEMENT DIV.

BUILDING 6, ROOM B-817

558-0908

CAPITOL COMPLEX

CHARLESTON, WV 25305

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: _____

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Incorporation By Reference as a Legislative Rule of the Child Support Enforcement Division Policy and Procedural Manual.
Type of Rule: X Legislative Interpretive Procedural
Agency Child Support Enforcement Division
Address Building 6, Room 817
State Capitol Complex
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

There is no fiscal impact of the proposed rule.

3. Objectives of these rules:

To amend the present rule to provide for the change in the name of the agency.

Rule Title: Incorporation by Reference as a legislative Rule of the
Child Support Enforcement Division Policy and Procedural Manual.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: 7-23-96

Signature of Agency Head or Authorized Representative

Martha J. Hall

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TITLE 97
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

OFFICE OF WEST VIRGINIA
THE STATE

SERIES 6
INCORPORATION BY REFERENCE AS A LEGISLATIVE
RULE OF THE CHILD SUPPORT ENFORCEMENT DIVISION
POLICY AND PROCEDURAL MANUAL

§97-6-1. General.

1.1. Scope. --This legislative rule amends the "Incorporation by Reference as a Legislative Rule of the Office of Child Support Enforcement Policy and Procedural Manual" to the "Incorporation by Reference as a Legislative Rule of the Child Advocate Office Policy and Procedural Manual" to the "Incorporation by Reference as a Legislative Rule of the Child Support Enforcement Division." The Child Support Enforcement Division succeeded the Child Advocate Office on July 1, 1995, by legislative enactment (WVC §48A-2-12). This manual details the methods and procedures by which child advocate attorneys Child Support Enforcement legal assistants under the direction of an attorney process support cases, establish and enforce support

obligations, locate absent parents, conduct investigations for family law masters and circuit court judges, mediate disputes, compute support arrearages, and collect and distribute support payments.

1.2 Authority. --W. Va. Code §9-2-6

1.3. Filing Date. --

1.4. Effective Date. --

§97-6-2. Incorporation by Reference as a Legislative Rule of The Child Advocate Office The Child Support Enforcement Division Policy and Procedural Manual.

The Child Advocate Office Child Support Enforcement Division Manual is hereby incorporated by reference as a

legislative rule. This document
is available from the Office of
the Secretary of State or the
West Virginia Department of
Health and Human Services
Resources.

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Child Support Enforcement Division

Subject: Incorporation by Reference as a Legislative Rule of the Child Support Enforcement Division Policy and Procedure Manual

CSR Cite: 97CSR6 (new cite, old site not provided)

Counsel: JAA

PERTINENT DATES

Filed for public comment: July 25, 1996
Public comment period ended: August 26, 1996
Filed following public comment period: August 30, 1996
Filed LRMRC: August 30, 1996
Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Brief Summary

The purpose of this rule is to adopt by reference the Child Support Enforcement Division Policy and Procedure Manual. The proposed rule changes the name of the agency to the Child Support Enforcement Division.

Section Summary

The changes to Section 1 and Section 2 change the name of the agency from the Child Advocate Office to the Child Support Enforcement Division. A couple of style changes are also made.

AUTHORITY

Statutory authority: W.Va. Code, §9-2-6 provides that:

Within limits of state appropriations and federal grants and subject to provisions of state and federal laws and regulations, the commissioner, in addition to all other powers, duties and responsibilities granted and assigned to that office in this chapter and elsewhere by law, is authorized and empowered to:

(1) Promulgate, amend, revise and rescind department rules and regulations respecting the organization and government of the department and the execution and administration of those powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the commissioner.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Yes. This rule gives the agency the ability to amend a legislative rule (through revising its policy manuel) and as a result, amending the law.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

No. The authorizing statute makes no mention of a legislative rule authorized policy manuel.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

No. It is not necessary or appropriate to make the Policy Manuel an Legislative Rule.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

This rule incorporates the Division's manual establishing the procedures and policy of the Child Enforcement Division. This should be a procedural rule and not a legislative rule. The effect of allowing this to become a legislative rule would be to give the division's policy manual the full force and effect of law and allow the agency to prospectively amend the law by amending the policy manual. Counsel recommends that this rule be withdrawn and refiled as a procedural rule.