


---

---

---

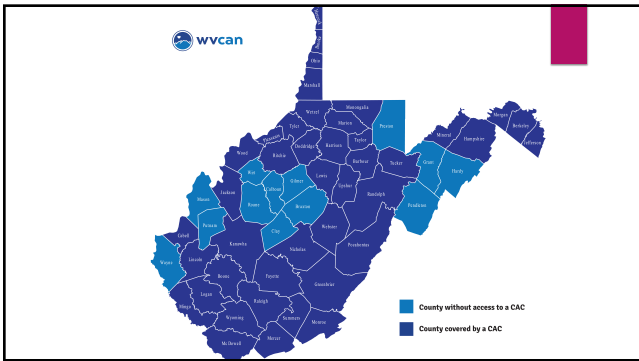
---

---

---

---

---




---

---

---

---

---

---

---

---

### Forensic Interview

- ▶ Obtain information from a child abuse allegations that will support accurate and fair decision making by the multidisciplinary investigative team within the criminal justice, child protection, and service delivery systems
- ▶ Developmentally and culturally sensitive, unbiased, fact-finding, legally sound
- ▶ Interviewers must be trained on a nationally-recognized protocol, complete ongoing education, participate in peer review
- ▶ Interviews are recorded, coordinated to eliminate duplication

---

---

---

---

---

---

---

---

**Investigation Phase**

- ▶ Professionals or agencies that are allowed **access** or **copies**:
  - ▶ Employee or representative of CAC agency
  - ▶ Psychologist, psychiatrist, nurse, social worker or other person appointed by court to interview child
  - ▶ CPS worker, law enforcement, prosecuting attorney (or representative), or any other person investigating allegations of criminal behavior or abuse/neglect.

W. Va. Code § 62-6B-4(b)

---

---

---

---

---

---

---

---

**Investigation Phase**

- ▶ Professionals may provide access of recorded interviews to:
  - ▶ Legal parent, guardian or custodian if no allegations that may give rise to judicial or administrative proceedings and
  - ▶ Access would not undermine/frustrate an ongoing investigation
- ▶ Treating professionals:
  - ▶ Psychologists, psychiatrists, physicians, nurse, social workers providing services
  - ▶ Reasonable access

W. Va. Code § 62-6B-4(b)

---

---

---

---

---

---

---

---

**Why Trial Court Rule 18?**

- ▶ Trust – foundational to child victim disclosure, healing
- ▶ In the wrong hands...
  - ▶ Dr. Phil
  - ▶ Employment hearings
  - ▶ Facebook
- ▶ Legislation in 2015 (SB 504) – defined how interviews are shared prior to court, asked WV Supreme Court of Appeals to promulgate rule
- ▶ Trial Court Rule 18 enacted November 1, 2017

---

---

---

---

---

---

---

---

The Ins and Outs of  
Trial Court Rule 18

- ▶ Applies to all proceedings in:
  - ▶ Circuit Court
  - ▶ Family Court
  - ▶ Magistrate Court
- ▶ Implements confidentiality provisions of W. Va. Code §62-6B-6

Trial Court Rule 18.01

---

---

---

---

---

---

---

---

The Ins and Outs of  
Trial Court Rule 18

- ▶ Governs access and use of a "Recorded Interview" of an "Interviewed Child"

Trial Court Rule 18.02

---

---

---

---

---

---

---

---

The Ins and Outs of  
Trial Court Rule 18

- ▶ "Interviewed Child"
  - ▶ Person under age 18
  - ▶ Interview is memorialized by electronic recording equipment
  - ▶ Interview involves alleged criminal behavior
  - ▶ Interview involves allegations of abuse or neglect of any child under age 18

Trial Court Rule 18.02(a)

---

---

---

---

---

---

---

---

The Ins and Outs of Trial Court Rule 18

- ▶ "Recorded Interview" conducted by:
  - ▶ Employee or CAC Representative
  - ▶ Psychologist, psychiatrist, physician, nurse, social worker, other person who is court-appointed to interview child
  - ▶ CPS worker, law enforcement officer, prosecuting attorney or his/her representative, other person investigating alleged crime or abuse/neglect

Trial Court Rule 18.02(b)

---

---

---

---

---

---

---

---

The Ins and Outs of Trial Court Rule 18

- ▶ "Recorded Interview" includes
  - ▶ Actual recording
  - ▶ Transcript of the recording
  - ▶ Written documentation related to interview
- ▶ "Recorded Interview" does not include
  - ▶ Criminal complaints
  - ▶ Police reports
  - ▶ Routine law enforcement documents

Trial Court Rule 18.02(b)

---

---

---

---

---

---

---

---

The Ins and Outs of Trial Court Rule 18

- ▶ No **use** of a recorded interview unless authorized by protective order
  - ▶ (Access to, publication, duplication, use)
- ▶ This protective order is entered pursuant to Trial Court Rule 18 and West Virginia Code § 62-6B-6.

Trial Court Rule 18.02(c)

---

---

---

---

---

---

---

---

The Ins and Outs of Trial Court Rule 18

- ▶ This protective order governs the maintenance, disclosure, and use of any recorded interview of a child for purposes related to a criminal investigation or allegations of abuse or neglect of any child.

Trial Court Rule 18.02(b)

---

---

---

---

---

---

---

---

The Ins and Outs of Trial Court Rule 18

- ▶ For the purposes of this protective order, the term "recorded interview" shall include the electronic recording itself, any transcript of the recording or any written documentation related to the interview.

Trial Court Rule 18.02(b)

- ▶ Any counsel, guardian ad litem or other official who discloses a copy of a recorded interview, any transcript or related documentation shall mark them as follows: "Confidential-Penalties for Unauthorized Disclosure or Duplication."

Trial Court Rule 18.03(b)(1)

---

---

---

---

---

---

---

---

The Ins and Outs of Trial Court Rule 18

- ▶ Counsel for any party, the guardian ad litem and their employees who may assist counsel may receive duplications of a recorded interview, but may only use the duplications for the purposes of the case and only to the extent allowed by this protective order.

Trial Court Rule 18.03(b)(2)

---

---

---

---

---

---

---

---

### The Ins and Outs of Trial Court Rule 18

- ▶ Unless allowed by separate court order, counsel for any party, the guardian ad litem or other official in lawful possession of a recorded interview may not provide duplicates of any recorded interview, as defined above, to a party or any other individual. However, counsel or the guardian ad litem may allow a party to the case to review a recorded interview under the supervision of counsel, the guardian ad litem or their designated staff members.
- ▶ Counsel allows party to review recorded interview but may not provide duplicates

Trial Court Rule 18.03(b)(3)

---

---

---

---

---

---

---

---

### The Ins and Outs of Trial Court Rule 18

- ▶ If a party is not represented by counsel, the party may review the recorded interview, transcript or written documentation under the supervision of designated court staff.

Trial Court Rule 18.03(b)(3)

---

---

---

---

---

---

---

---

### The Ins and Outs of Trial Court Rule 18

- ▶ Unless allowed by court order, counsel for any party or the guardian ad litem may not display or disclose recordings, transcripts or related documentation to non-party family members of the defendant, respondent, petitioner, victim or any other individual.
- ▶ Court must find that display or disclosure is necessary
  - ▶ To protect party's rights or
  - ▶ Is in the interviewed child's best interest

Trial Court Rule 18.03(b)(3)

---

---

---

---

---

---

---

---

### The Ins and Outs of Trial Court Rule 18

- ▶ The recording, transcripts or other documentation may not be disclosed to consultants, investigators and experts who are engaged to assist counsel in the proceedings until he or she has signed a written agreement to be bound by the terms of the protective order and the agreement has been filed with the court.

Trial Court Rule 18.03(b)(4)

---

---

---

---

---

---

---

---

### The Ins and Outs of Trial Court Rule 18

- ▶ Counsel and guardians ad litem must take reasonable and appropriate measures to prevent unauthorized access to or use of the recorded interview, any transcripts or related documentation.

Trial Court Rule 18.03(b)(5)

---

---

---

---

---

---

---

---

### The Ins and Outs of Trial Court Rule 18

- ▶ Any party or counsel who seeks to file a recorded interview as an exhibit to a pleading or who discusses the recorded interview in a pleading shall first seek to protect the confidentiality of the information by taking appropriate measures, including but not limited to arranging for filing the recorded interview, any transcript, related documentation or the pleading under seal.

Trial Court Rule 18.03(b)(7)

---

---

---

---

---

---

---

---

The Ins and Outs of Trial Court Rule 18

- ▶ Any party or attorney who seeks to use a recorded interview at a deposition shall have the obligation and right to designate the recorded interview as confidential and subject to the provisions of this protective order.

Trial Court Rule 18.03(b)(7)

---

---

---

---

---

---

---

---

The Ins and Outs of Trial Court Rule 18

- ▶ Any party who intends to use a recorded interview, transcript or related documentation at a hearing or trial shall provide prior notice to the court of his or her intention to do so.

Trial Court Rule 18.03(b)(8)

---

---

---

---

---

---

---

---

The Ins and Outs of Trial Court Rule 18

- ▶ Any person who knowingly and willfully duplicates or publishes a recorded interview in violation of this protective order may be subject to criminal proceedings which can result in incarceration of not less than 10 days nor more than one year or fined not less than \$2,000 nor more than \$10,000 or both.
- ▶ A person who violates this order may be subject to contempt of court proceedings

Trial Court Rule 18.03(b)(9)

---

---

---

---

---

---

---

---

The Ins and Outs of  
Trial Court Rule 18

- ▶ Expedited access
  - ▶ Expedited access allowed to recorded interview but duplications not permitted

Trial Court Rule 18.03(c)

---

---

---

---

---

---

---

---

Production by Non-Parties

- ▶ Party serves motion with proposed subpoena on:
  - ▶ Counsel, unrepresented parties
  - ▶ Prosecuting Attorney
  - ▶ Person/entity to whom subpoena is directed

Trial Court Rule 18.04(a), (b)

---

---

---

---

---

---

---

---

Production by Non-Parties

- ▶ Court conducts hearing and determines whether all or part of "recorded interview" is produced
- ▶ Court order includes provisions of protective order found in Trial Court Rule 18.03(b)

Trial Court Rule 18.04

---

---

---

---

---

---

---

---

QUESTIONS?

---

---

---

---

---

---

---

Evaluations

- ▶ Thank you for attending please drive safely.
- ▶ Please complete your evaluation and return to the registration table.

---

---

---

---

---

---

---