

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1971



**ENROLLED**

COMMITTEE SUBSTITUTE FOR  
HOUSE BILL No. 543

ORIGINATING IN THE COMMITTEE ON THE JUDICIARY

(By Mr. \_\_\_\_\_)



PASSED MARCH 13, 1971

In Effect NINETY DAYS FROM Passage



FILED IN THE OFFICE  
JOHN D. KOSMIGER, BY  
SECRETARY OF STATE  
THIS DATE 4-2-71

543

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**House Bill No. 543**

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AN ACT to amend chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a, relating to guardianships for mentally retarded persons; limited and standby guardianships for such persons, the duration of all such guardianships and the application of other provisions of this code with respect to such mentally retarded persons.

*Be it enacted by the Legislature of West Virginia:*

That chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten-a, to read as follows:

**ARTICLE 10A. GUARDIANS OF MENTALLY RETARDED PERSONS.**

**§44-10A-1. Guardianship of mentally retarded person.**

1 When it shall appear to the satisfaction of the county  
2 court that a person is a mentally retarded person as  
3 defined in section three, article one, chapter twenty-  
4 seven of this code, that such condition is certified  
5 as being permanent in nature by at least two physicians,  
6 licensed to practice medicine in this state, or one such  
7 physician and one licensed psychologist having qualifi-  
8 cations to make such certification, and that such person re-  
9 quires in his best interests the appointment of a guardian,  
10 the county court is authorized and empowered, upon ap-  
11 plication of both parents, natural or adoptive, if living, or  
12 upon application of one such parent and the consent of the  
13 other, if living, or upon application of any other in-  
14 terested person and the consent of both parents or the  
15 surviving parent if either or both such parents shall be  
16 living, to appoint such guardian.

**§44-10A-2. Limited guardianship.**

1 When it shall appear to the satisfaction of the county  
2 court that such mentally retarded person for whom an

3 application for guardianship is made is over the age of  
4 twenty-one years and is wholly or substantially self-  
5 supporting by means of his wages or earnings from  
6 employment, the county court is authorized and em-  
7 powered to appoint a limited guardian for such mentally  
8 retarded person who shall receive, manage, disburse  
9 and account for only such property of said mentally  
10 retarded person as shall be received from other than the  
11 wages or earnings of said person.

12 The mentally retarded person for whom a limited  
13 guardian has been appointed shall have the right to  
14 receive and expend any and all wages or other earnings  
15 of his employment and shall have the power to contract  
16 or legally bind himself for any sum of money which in  
17 the aggregate shall not exceed one month's wages or  
18 earnings from such employment or the sum of three  
19 hundred dollars, whichever is less, in any one month.

20 In all other respects the requirements, powers and  
21 duties of a limited guardian shall be the same as those  
22 of a committee as set forth in article eleven, chapter  
23 twenty-seven of this code.

**§44-10A-3. Duration of guardianship.**

1 Such guardianship shall not terminate at the age of  
2 majority or upon marriage and such limited guardianship  
3 shall not terminate upon marriage but shall continue  
4 during the life of such mentally retarded person, or until  
5 terminated by the county court; except that the prior ap-  
6 pointment of a guardian or limited guardian for a men-  
7 tally retarded female shall terminate upon her subse-  
8 quent marriage. A person of the age of twenty-one or  
9 more years for whom a guardian has been previously ap-  
10 pointed and a person for whom a limited guardian has  
11 been previously appointed may, however, petition the  
12 county court which made such appointment or the county  
13 court of his county of residence to have the guardianship  
14 or limited guardianship terminated, or, in the alternative,  
15 to have the guardian or limited guardian discharged and  
16 a successor appointed, or to have the guardian designated  
17 as a limited guardian.

18 Upon such a petition for review or upon a petition  
19 for appointment of a guardian in the first instance for  
20 a mentally retarded person over the age of twenty-one

21 or upon a petition for appointment of a limited guardian  
22 in the first instance for a mentally retarded person, the  
23 county court shall conduct a hearing at which the re-  
24 tarded person shall be present.

**§44-10A-4. Standby guardianship.**

1 (a) Upon application or consent of both parents,  
2 natural or adoptive, if living, or of the surviving parent,  
3 a standby guardian of a mentally retarded person may  
4 be appointed by the county court. The county court  
5 may also upon application or consent of such parents  
6 or surviving parent appoint an alternate to such guar-  
7 dian, to act if such guardian shall die or become in-  
8 capacitated after the death of the last surviving parent  
9 of such retarded person, or if such guardian shall re-  
10 nounce his appointment.

11 (b) Such standby guardian, or alternate in the event  
12 of such guardian's death or incapacity or his renuncia-  
13 tion, shall without further proceedings be empowered  
14 to assume the duties of his office immediately upon  
15 death or adjudication of incompetency of the last sur-  
16 viving of the natural or adoptive parents of such men-

17 tally retarded person, subject only to confirmation of  
18 his appointment by the county court within sixty days  
19 following assumption of his duties of office.

20 (c) After the appointment of a standby guardian,  
21 the court shall have and retain general jurisdiction over  
22 the mentally retarded person for whom such guardian  
23 shall have been appointed, to take of its own motion or  
24 to entertain and adjudicate such steps and proceedings  
25 relating to such standby guardianship as may be deemed  
26 necessary or proper for the welfare of such retarded  
27 person.

**§44-10A-5. Application of other provisions.**

1 To the extent that the context thereof shall admit, the  
2 provisions of article ten of this chapter shall apply to  
3 all proceedings under this article with the same force and  
4 effect as if “a child”, “a ward” or “a minor”, as therein  
5 referred to, were “a mentally retarded person” as herein  
6 defined, and a “guardian” as therein referred to were a  
7 “guardian of a mentally retarded person”, as herein pro-  
8 vided for.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Quessell G. Beall*  
Chairman Senate Committee

*Phyllis J. Rutledge*  
Chairman House Committee

Originated in the House.

In effect ninety days from passage.

*J. Howard Keyser*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*E. Hans McDoune*  
President of the Senate

*Lewis T. McManus*  
Speaker House of Delegates

The within *approved* this the *1<sup>st</sup>*  
day of *April*, 1971.

*Arch A. Shaw Jr.*  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/18/71

Time 1:55 p.m.

RECEIVED

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OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA