

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-26-80

Time 11:30 A.M.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980



ENROLLED

*Committee Substitute
for*
HOUSE BILL No. 928

(By Mr. Coardle & Mr. Schifano.)



Passed March 7, 1980

In Effect ninety days from Passage



700: 928

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 928

(By Mr. CAUDLE and Mr. SCHIFANO)

(Originating in the House Committee on the Judiciary)

[Passed March 7, 1980; in effect ninety days from passage.]

AN ACT to amend and reenact article ten-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article three, chapter fifty-eight of said code, all relating to mentally retarded and mentally handicapped persons generally; defining certain terms with respect thereto; providing for guardianships of mentally retarded and handicapped persons in the state; providing for applications to county commission by parents and interested persons, corporations and governmental agencies and by executors of estates of parents when directed by will to make application; providing for consent of parents unless parents cannot be located despite diligent efforts and use of all reasonable means; providing for powers and duties of guardians for control of the person, estate and moneys paid on behalf of such mentally retarded or handicapped persons; providing for duration of guardianship until terminated by county commission; requiring mentally retarded and mentally handicapped persons who are eighteen years of age or older to be present at hearings and providing for certain exceptions

when such persons are not required to be present; providing for limited guardianships and standby guardianships; permitting nonprofit corporations to act as guardians, limited guardians and standby guardians of mentally retarded or mentally handicapped persons; giving the state director of health and the county commissions of the state powers, duties and responsibilities with respect thereto; relating to a certain licensure and certain compensation for certain corporations that are guardians; and providing for appeals to circuit courts from orders of county commissions appointing and qualifying guardians and fiduciaries.

Be it enacted by the Legislature of West Virginia:

That article ten-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article three, chapter fifty-eight of said code, as amended, be amended and reenacted, all to read as follows:

**CHAPTER 44. ADMINISTRATION OF ESTATES
AND TRUSTS.**

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

**§44-10A-1. Guardianship of mentally retarded and mentally handi-
capped persons generally.**

1 When it shall appear to the satisfaction of the county com-
2 mission that a person is a mentally retarded person as defined
3 in section three, article one, chapter twenty-seven of this code,
4 or is otherwise mentally handicapped, that such condition is
5 certified as being permanent in nature by at least two physi-
6 cians licensed to practice medicine in this state or one such
7 physician and one licensed psychologist having qualifications to
8 make such certification and that such person requires in his
9 best interests the appointment of a guardian, the county com-
10 mission is authorized and empowered upon application of
11 both parents, natural or adoptive, if living, or upon applica-
12 tion of one such parent and the consent of the other, if living,
13 or upon application of the executor of the estate of the last
14 surviving parent of such person when directed to do so by the

15 last will and testament of such parent, or upon application of
 16 any other interested person, corporation or governmental
 17 agency, if the parents are not living, or if they both or one of
 18 them be living, with the consent of such parents or surviving
 19 parent, to appoint a guardian and to specify the powers and
 20 duties the guardian shall exercise for the person of such per-
 21 son, the estate of such person, and any moneys from any source
 22 as may be paid on behalf of such person to the guardian or to
 23 another party: *Provided*, That such consent of a parent shall
 24 not be necessary if it is shown, upon oath or affirmation, that
 25 such parent cannot be located to request such consent despite
 26 the diligent efforts of applicant by use of all reasonable means
 27 to do so. For the purposes of this chapter, "mentally handi-
 28 capped person" shall mean any person with a condition medi-
 29 cally determined which results in a substantial mental impair-
 30 ment of general intellectual functioning and which results in
 31 that person's inability to function normally in society for his
 32 own best interests.

§44-10A-2. Limited guardianship.

1 When it shall appear to the satisfaction of the county com-
 2 mission that such mentally retarded or mentally handicapped
 3 person for whom an application for guardianship is made is
 4 over the age of eighteen years and is wholly or substantially
 5 self-supporting by means of his wages or earnings from em-
 6 ployment, the county commission is authorized and empowered
 7 to appoint a limited guardian for such mentally retarded or
 8 mentally handicapped person who shall receive, manage,
 9 disburse and account for only such property of said mentally
 10 retarded or mentally handicapped person as shall be re-
 11 ceived from other than the wages or earnings of said person.

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

20 In all other respects the requirements, powers and duties
21 of a limited guardian shall be the same as those of a committee
22 as set forth in article eleven, chapter twenty-seven of this
23 code unless otherwise specified by the county commission. A
24 nonprofit corporation may serve as a limited guardian under
25 the conditions set forth in section six of this article.

§44-10A-3. Duration of guardianship.

1 Such guardianship shall not terminate at the age of majority
2 or upon marriage and such limited guardianship shall not
3 terminate upon marriage but shall continue during the life
4 of such mentally retarded or mentally handicapped person or
5 until terminated by the county commission. A person of the
6 age of eighteen or more years for whom a guardian has been
7 appointed and a person for whom a limited guardian has been
8 appointed may however petition the county commission
9 which made such appointment or the county commission of
10 his county of residence to have the guardianship or limited
11 guardianship terminated or, in the alternative, to have the
12 guardian or limited guardian discharged and a successor ap-
13 pointed, or to have the guardian designated as a limited
14 guardian.

15 Upon such a petition for review or upon a petition for
16 appointment of a guardian in the first instance for a mentally
17 retarded or mentally handicapped person over the age of
18 eighteen years or upon a petition for appointment of a limited
19 guardian in the first instance for any such person, the county
20 commission shall conduct a hearing at which such person
21 shall be present. Notwithstanding any requirement hereof to
22 the contrary such hearing may proceed without the presence
23 of the individual alleged to be mentally retarded or mentally
24 handicapped if (1) proper notice has been served upon the
25 party alleged to be mentally retarded or mentally handi-
26 capped, and (2) a duly licensed physician shall have certified
27 in writing and upon affidavit that he or she has examined
28 such individual and that such individual is physically unable
29 to appear at such hearing or that such an appearance would
30 likely impair or endanger the health of such individual, or
31 (3) such individual refuses to appear, and (4) upon the

32 specific written findings by such commission of facts as will
33 justify a hearing without the presence of such individual
34 as provided in this section.

§44-10A-4. Standby guardianship.

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

10 (b) Such standby guardian or alternate in the event of
11 such guardian's death or incapacity or his renunciation shall
12 without further proceedings be empowered to assume the dut-
13 ies of his office immediately upon death or adjudication of
14 incompetency of the last surviving of the natural or adoptive
15 parents of such mentally retarded or mentally handicapped
16 person, subject only to confirmation of his appointment by the
17 county commission within sixty days following his assumption
18 of his duties of office.

19 (c) After the appointment of a standby guardian, the coun-
20 ty commission shall have and retain general jurisdiction over
21 the mentally retarded or mentally handicapped person for
22 whom such guardian shall have been appointed to take of its
23 own motion or to entertain and adjudicate such steps and
24 proceedings relating to such standby guardianship as may be
25 deemed necessary or proper for the welfare of such 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 all pro-
3 ceedings under this article with the same force and effect
4 as if a "child," a "ward" or a "minor" as therein referred to
5 were a "mentally retarded or mentally handicapped person" as
6 used in this article and as if "guardian" as therein referred to

7 were a "guardian of a mentally retarded or mentally handi-
8 capped person" as used in this article.

**§44-10A-6. Guardianship by nonprofit corporations; authority;
licensure; compensation.**

1 (a) A nonprofit corporation chartered in this state may
2 be appointed to serve as guardian, limited guardian or standby
3 guardian for a mentally retarded or mentally handicapped
4 person if it is licensed in accordance with the requirements
5 of subsection (b) of this section.

6 (b) The state director of health may license nonprofit
7 corporations that seek to serve as guardians for mentally
8 retarded or mentally handicapped persons. He shall promulgate
9 regulations for the licensure of such nonprofit corporations
10 and shall provide for the review of such licenses. The regul-
11 ations shall establish standards to assure that any corpora-
12 tion licensed for such guardianship meets the following
13 conditions:

14 (1) Has sufficient fiscal and administrative resources to
15 perform the fiduciary duties and make the reports and ac-
16 countings required by this chapter;

17 (2) Will respect and maintain the dignity and privacy of
18 the mentally retarded or mentally handicapped person;

19 (3) Will protect and advocate the legal human rights
20 of the mentally retarded or mentally handicapped person;

21 (4) Will assure that the mentally retarded or mentally
22 handicapped person is receiving appropriate educational, vo-
23 cational, residential and medical services in the setting least
24 restrictive of the individual's personal liberty;

25 (5) Will encourage the mentally retarded or mentally handi-
26 capped person to participate to the maximum extent of his
27 abilities in all decisions affecting him and to act in his own
28 behalf on all matters in which he is able to do so;

29 (6) Does not provide educational, vocational, residential
30 or medical services to the mentally retarded or mentally
31 handicapped person; and

32 (7) Has written provision for distribution of assets and
33 appointment of standby guardian for the mentally retarded or
34 mentally handicapped person in the event the corporation
35 ceases to be licensed by the state director of health or may
36 otherwise become unable to act as guardian.

37 (c) A duly licensed nonprofit corporation that has been
38 appointed a guardian pursuant to the provisions of this article
39 is entitled to compensation in accordance with the provisions
40 of section fourteen, article four of this chapter and is entitled
41 to be compensated for services performed as guardian of the
42 person as well as guardian of the estate.

43 (d) Except as provided in subsection (c) of this section, no
44 guardian or limited guardian nor any officer, agent, director,
45 servant or employee of any such guardian or limited guardian
46 shall do business with or in any way profit, either directly or
47 indirectly, from the estate or income of any mentally retarded
48 or mentally handicapped person for whom such guardian or
49 limited guardian serves.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 3. APPEALS FROM COUNTY COMMISSIONS.

§58-3-1. When appeal lies to circuit court.

1 An appeal shall lie to the circuit court of the county from
2 the final order of the county commission in the following
3 cases: (a) In cases of contested elections tried and determined
4 by such court; (b) in cases of contempt; (c) the establishment
5 and regulation of a road, way, bridge, public landing, ferry or
6 mill; (d) the probate of a will; (e) the appointment and quali-
7 fication of a personal representative, guardian, including but
8 not limited to, all fiduciaries made pursuant to article ten-a,
9 chapter forty-four of this code, or committee, and the settle-
10 ment of their accounts; (f) in any other case by law specially
11 provided.

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

James L. Davis
Chairman Senate Committee

Clarence C. Chestnut Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Todd C. Mills
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

H. J. Brantley Jr.
President of the Senate

Clayton M. Lee Jr.
Speaker House of Delegates

The within is approved this the 26
day of March, 1980.

Paul R. Ryan
Governor

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OFFICE OF THE GOVERNOR

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