WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

ENROLLED
Committee Substitute
HOUSE BILL No. 928

(By Mr. [Signature])

Passed March 7, 1980
In Effect ninety days from Passage

8-26-80
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
Enr. Com. Sub. for H. B. 928] 2

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 handi-
capped persons; giving the state director of health and the
county commissions of the state powers, duties and responsi-
bilities with respect thereto; relating to a certain licensure and
certain compensation for certain corporations that are guar­
dians; 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.

When it shall appear to the satisfaction of the county com-
mission that a person is a mentally retarded person as defined
in section three, article one, chapter twenty-seven of this code,
or is otherwise mentally handicapped, that such condition is
certified as being permanent in nature by at least two physi-
cians licensed to practice medicine in this state or one such
physician and one licensed psychologist having qualifications to
make such certification and that such person requires in his
best interests the appointment of a guardian, the county com-
mision is authorized and empowered upon application of
both parents, natural or adoptive, if living, or upon applica-
tion of one such parent and the consent of the other, if living,
or upon application of the executor of the estate of the last
surviving parent of such person when directed to do so by the
last will and testament of such parent, or upon application of
any other interested person, corporation or governmental
agency, if the parents are not living, or if they both or one of
them be living, with the consent of such parents or surviving
parent, to appoint a guardian and to specify the powers and
duties the guardian shall exercise for the person of such per-
son, the estate of such person, and any moneys from any source
as may be paid on behalf of such person to the guardian or to
another party: Provided, That such consent of a parent shall
not be necessary if it is shown, upon oath or affirmation, that
such parent cannot be located to request such consent despite
the diligent efforts of applicant by use of all reasonable means
to do so. For the purposes of this chapter, "mentally handi-
capped person" shall mean any person with a condition medi-
cally determined which results in a substantial mental impair-
ment of general intellectual functioning and which results in
that person's inability to function normally in society for his
own best interests.

§44-10A-2. Limited guardianship.

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

The mentally retarded or mentally handicapped person for
whom a limited guardian has been appointed shall have the
right to receive and expend any and all wages or other earn-
ings of his employment and shall have the power to contract
or legally bind himself for any sum of money which in the
aggregate shall not exceed one month's wages or earnings
from such employment or the sum of three hundred dollars,
whichever is less, in any one month.
In all other respects the requirements, powers and duties of a limited guardian shall be the same as those of a committee as set forth in article eleven, chapter twenty-seven of this code unless otherwise specified by the county commission. A nonprofit corporation may serve as a limited guardian under the conditions set forth in section six of this article.

§44-10A-3. Duration of guardianship.

Such guardianship shall not terminate at the age of majority or upon marriage and such limited guardianship shall not terminate upon marriage but shall continue during the life of such mentally retarded or mentally handicapped person or until terminated by the county commission. A person of the age of eighteen or more years for whom a guardian has been appointed and a person for whom a limited guardian has been appointed may however petition the county commission which made such appointment or the county commission of his county of residence to have the guardianship or limited guardianship terminated or, in the alternative, to have the guardian or limited guardian discharged and a successor appointed, or to have the guardian designated as a limited guardian.

Upon such a petition for review or upon a petition for appointment of a guardian in the first instance for a mentally retarded or mentally handicapped person over the age of eighteen years or upon a petition for appointment of a limited guardian in the first instance for any such person, the county commission shall conduct a hearing at which such person shall be present. Notwithstanding any requirement hereof to the contrary such hearing may proceed without the presence of the individual alleged to be mentally retarded or mentally handicapped if (1) proper notice has been served upon the party alleged to be mentally retarded or mentally handicapped, and (2) a duly licensed physician shall have certified in writing and upon affidavit that he or she has examined such individual and that such individual is physically unable to appear at such hearing or that such an appearance would likely impair or endanger the health of such individual, or (3) such individual refuses to appear, and (4) upon the
specific written findings by such commission of facts as will
justify a hearing without the presence of such individual
as provided in this section.

§44-10A-4. Standby guardianship.

(a) Upon application or consent of both parents, natural
or adoptive, if living, or of the surviving parent, a standby
guardian of a mentally retarded or mentally handicapped
person may be appointed by the county commission. The
county commission may also upon application or consent of
such parents or surviving parent appoint an alternate to such
guardian to act if such guardian shall die or become incapacity
after the death of the last surviving parent of such
person or if such guardian shall renounce his appointment.

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

(c) After the appointment of a standby guardian, the county commission shall have and retain general jurisdiction over
the mentally retarded or mentally handicapped person for
whom such guardian shall have been appointed to take of its
own motion or to entertain and adjudicate such steps and
proceedings relating to such standby guardianship as may be
deemed necessary or proper for the welfare of such person.

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

To the extent that the context thereof shall admit, the provisions of article ten of this chapter shall apply to all proceedings under this article with the same force and effect
as if a “child,” a “ward” or a “minor” as therein referred to
were a “mentally retarded or mentally handicapped person” as
used in this article and as if “guardian” as therein referred to
§44-10A-6. Guardianship by nonprofit corporations; authority; licensure; compensation.

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

(b) The state director of health may license nonprofit corporations that seek to serve as guardians for mentally retarded or mentally handicapped persons. He shall promulgate regulations for the licensure of such nonprofit corporations and shall provide for the review of such licenses. The regulations shall establish standards to assure that any corporation licensed for such guardianship meets the following conditions:

1. Has sufficient fiscal and administrative resources to perform the fiduciary duties and make the reports and accountings required by this chapter;

2. Will respect and maintain the dignity and privacy of the mentally retarded or mentally handicapped person;

3. Will protect and advocate the legal human rights of the mentally retarded or mentally handicapped person;

4. Will assure that the mentally retarded or mentally handicapped person is receiving appropriate educational, vocational, residential and medical services in the setting least restrictive of the individual's personal liberty;

5. Will encourage the mentally retarded or mentally handicapped person to participate to the maximum extent of his abilities in all decisions affecting him and to act in his own behalf on all matters in which he is able to do so;

6. Does not provide educational, vocational, residential or medical services to the mentally retarded or mentally handicapped person; and
(7) Has written provision for distribution of assets and appointment of standby guardian for the mentally retarded or mentally handicapped person in the event the corporation ceases to be licensed by the state director of health or may otherwise become unable to act as guardian.

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

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

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 3. APPEALS FROM COUNTY COMMISSIONS.

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

An appeal shall lie to the circuit court of the county from the final order of the county commission in the following cases: (a) In cases of contested elections tried and determined by such court; (b) in cases of contempt; (c) the establishment and regulation of a road, way, bridge, public landing, ferry or mill; (d) the probate of a will; (e) the appointment and qualification of a personal representative, guardian, including but not limited to, all fiduciaries made pursuant to article ten-a, chapter forty-four of this code, or committee, and the settlement of their accounts; (f) in any other case by law specially provided.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James E. Davis
Chairman Senate Committee

Clarence E. Christian Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Todd C. Mills
Clerk of the Senate

C.L. Blankenship
Clerk of the House of Delegates

J.S. Baxley, Jr.
President of the Senate

Ade M. S. Lee Jr.
Speaker House of Delegates

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

J. F. Lilly
Governor