

COMMITTEE SUBSTITUTE

for

H. B. 2815

(BY DELEGATE(S) MILEY, FLEISCHAUER, SKINNER,
SHOTT AND BARILL)

(By Request of the Supreme Court of Appeals)

[March 18, 2013]

A Bill to amend and reenact §44-10-3 of the Code of West Virginia, 1931, as amended, relating generally to clarifying and modifying the process of appointing and terminating guardians for minors.

Be it enacted by the Legislature of West Virginia:

That §44-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-3. Appointment and termination of guardian for a minor.

- 1 (a) The circuit court and family court have concurrent
- 2 jurisdiction to appoint a guardian for a minor.

3 (b) Venue for a petition for appointment of guardianship is
4 in the county in which the minor has resided for the past six
5 months unless the court finds extraordinary circumstances for a
6 sooner filing. If the child is a nonresident of this state and only
7 the guardianship of the estate is sought the petition may be filed
8 in the county in which the child has an estate.

9 (c) All proceedings shall be conducted in accordance with
10 the Rules of Practice and Procedure for Minor Guardianship
11 Proceedings.

12 (d) Any responsible person with knowledge of the facts
13 regarding the welfare and best interests of a minor may petition
14 for an appointment of a guardian except a parent or other person
15 whose rights to the minor have been terminated. No guardianship
16 petition may be considered if the child who is the subject of the
17 petition is involved in another court proceeding relating to
18 custody or guardianship or if the petitioner is a parent seeking
19 custodial rights adverse to the other parent.

20 (e) Within two days of the filing of a petition for the
21 appointment of a guardian, the circuit clerk shall notify the court.
22 The court shall hold a hearing upon the petition for the

23 appointment of a guardian within ten days after the petition is
24 filed. If all persons entitled to service in accordance with the
25 Rules of Practice and Procedure for Minor Guardianship
26 Proceedings have not been served at least five days prior to the
27 hearing or have not waived service the court shall continue the
28 hearing but may appoint a temporary guardian pursuant to
29 subsection (g) below.

30 (f) The court may appoint a guardian for a minor if the court
31 finds by clear and convincing evidence that the appointment is
32 in the minor's best interest and:

33 (1) The parents consent;

34 (2) The parents' rights have been previously terminated;

35 (3) The parents are unwilling or unable to exercise their
36 parental rights;

37 (4) The parents have abandoned their rights by a material
38 failure to exercise them for a period of more than six months; or

39 (5) There are extraordinary circumstances that would, in all
40 reasonable likelihood, result in serious detriment to the child if
41 the petition is denied.

42 (g) Whether or not one or more of the conditions of
43 subsection (f) have been established, the court may appoint a

44 temporary guardian for a minor upon a showing that an
45 immediate need exists or that a period of transition into the
46 custody of a parent is needed so long as the appointment is in the
47 best interest of the minor. The temporary guardian has the
48 authority of a guardian appointed pursuant to subsection (f) but
49 the duration of the temporary guardianship may not exceed six
50 months. A temporary guardianship may be extended beyond six
51 months upon further order of the court finding continued need in
52 the best interest of the minor.

53 (h) Any suitable person may be appointed as the minor's
54 guardian. A parent shall receive priority subject only to the
55 provisions of subsections (d) and (f) above. However, in every
56 case the competency and fitness of the proposed guardian must
57 be established and a determination made that the appointment is
58 in the best interest of the child.

59 (i) The court, the guardian or the minor may revoke or
60 terminate the guardianship appointment when:

61 (1) The minor reaches the age of eighteen and executes a
62 release stating that the guardian's estate was properly
63 administered and that the minor has received the assets of the
64 estate from the guardian;

65 (2) The guardian or the minor dies;

66 (3) The guardian petitions the court to resign and the court
67 enters an order approving the resignation; or

68 (4) A petition is filed by the guardian, the minor, a parent or
69 an interested person or upon the motion of the court stating that
70 the minor is no longer in need of the assistance or protection of
71 a guardian due to changed circumstances and the termination of
72 the guardianship would be in the minor's best interest.

73 (j) For a petition to revoke or terminate a guardianship filed
74 by a parent, the burden of proof is on the moving party to show
75 by a preponderance of the evidence that there has been a material
76 change of circumstances and that a revocation or termination is
77 in the child's best interest.

78 (k) A guardianship may not be terminated by the court if
79 there are any assets in the estate due and payable to the minor.
80 Another guardian may be appointed upon the resignation of a
81 guardian whenever there are assets in the estate due and payable
82 to the minor.

83 (l) Other than court orders and case indexes, all other records
84 of a guardian proceeding involving a minor are confidential and

85 shall not be disclosed to anyone who is not a party to the
86 proceeding, counsel of record for the proceeding, the court
87 presiding over the proceeding or other family or circuit court
88 presiding over another proceeding involving the minor absent a
89 court order permitting examination of such records.

NOTE: This bill is recommended for passage by the Court Improvement Board of the Supreme Court of Appeals. It proposes a comprehensive overhaul of W.Va. Code §44-10-3, appointment and revocation of guardian by county commission. This section has been mostly unchanged since jurisdiction changed from county commissions to circuit and family courts in 2004. The new language is more consistent with W.Va. Code §48-9-101 et. seq. (custody of children) and recent case law, including In re Antonio R.A., 228 W.Va. 380, 719 S.E.2d 850 (2011). It elaborates on or makes clarification regarding who may file a petition, venue, interaction with other court cases, service requirements, circumstances that may warrant appointment of a guardian, who may be appointed as a guardian, standard of evidence for appointment (clear and convincing) and burden of proof for revocation or terminations of guardianship (preponderance of the evidence on moving party).

This section has been completely rewritten; therefore, it has been completely underscored.

