

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2490

By Delegate Rowe

[Introduced January 11, 2023; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §44A-6-1, §44A-6-2, §44A-6-3, §44A-6-4, and §44A-6-5; and to amend and
 3 reenact §51-2A-2 of said code, all relating to establishing a procedure to name a kinship
 4 legal guardian; defining terms; establishing eligibility to file a petition; describing required
 5 contents for a petition; bestowing family court jurisdiction; setting fee; providing for review
 6 of petition without hearing and entry of an order of approval; and describing the scope and
 7 effect of an order of approval.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND
 CONSERVATORSHIP ACT.**

ARTICLE 6. KINSHIP LEGAL GUARDIAN.

§44A-6-1. Definitions.

1 As used in this article:

2 "Absence of substantial care and support of legal parents" means the biological mother
 3 and father of a supported person and the legal mother and father of the supported person if the
 4 legal mother and father are not the same as the biological parents who have provided care and
 5 support other than *de minimis* care and for a period of 12 or more months;

6 "Care and support" means the provision of a place to live, medical care, food and clothing
 7 and financial and familial support for the supported person's needs;

8 "Kinship legal guardian" means an adult person designated by a court order to be, in effect,
 9 the sole provider of substantial care and support of a supported person in the absence of
 10 substantial care and support of the legal parents of the child;

11 "Substantial care and support" means the primary or greatest amount of care and support
 12 provided for the needs of a supported person out of all sources of care and support in absence of
 13 substantial care and support of the legal parents; and

14 "Supported person" means a minor, 16 years of age or older, or an unmarried adult who, in
15 the absence of substantial care and support of the parents, is provided substantial care and
16 support either by another person or by themselves.

§44A-6-2. Who may file petition; contents.

1 (a) A petition for the appointment of a kinship legal guardian may be filed by any adult
2 resident of this state who has been providing substantial care and support to a supported person
3 for a minimum of 12 months in the absence of substantial care and support of legal parents of the
4 supported person.

5 (b) The petition shall include the following information:

6 (1) The petitioner's name, place of residence, post office address, and relationship to the
7 supported person;

8 (2) The name, date of birth, and current place of residence of the supported person;

9 (3) The names and last known locations of the biological or legal parents, along with the
10 dates – as nearly as it can be determined – of the last act of care and support for the supported
11 person by each parent;

12 (4) A statement of the length of the relationship that the petitioner has had with the
13 supported person, a statement of the length of time that the petitioner has been providing
14 substantial care and support for the child, and a brief description of the substantial care and
15 support provided by the petitioner;

16 (5) A brief description of any acts of care and support for the supported person provided by
17 any parent in the preceding 12 months;

18 (6) A signed verification from the petitioner attesting to the truth of the statements in the
19 petition; and

20 (7) A separate acknowledgement, signed by the supported person, attesting to the truth of
21 the statements of the petition and consenting to the appointment of the petitioner as the kinship
22 legal guardian for the child.

§44A-6-3. Filing of petition; jurisdiction; fees and costs.

1 (a) The petition shall be filed with the clerk of the circuit court in the county in which the
2 supported person resides. The family court for the county in which the proceeding is first
3 commenced shall have exclusive jurisdiction unless that court determines that a transfer of venue
4 would be in the best interests of the supported person.

5 (b) The fee for filing a petition shall be \$50 payable upon filing to the circuit clerk. The
6 person bringing the petition shall be responsible for the fees and costs of the proceeding; however,
7 any person who is pecuniarily unable to pay the fees and costs as set forth in §59-1-1 *et seq.* and
8 §51-2-1 *et seq.* of this code will not be required to pay the fees and costs.

9 (c) Because the petition does not seek to alter the parental rights of the biological and/or
10 legal parents of the child, no notice of the petition shall be required to be given to the biological
11 and/or legal parents of the supported person, but any parent may respond to the petition in writing,
12 submitted to the circuit clerk, to object or clarify any matter stated in the petition.

§44A-6-4. Evaluation of petition and entry of order.

1 (a) A judge of the family court having jurisdiction over the petition shall review the petition
2 and no hearing shall be required for the review or evaluation of the petition unless the family court
3 judge determines there are particular facts or circumstances which require a formal hearing. The
4 family court judge may also conduct an in-camera interview of the supported person if the judge
5 deems it to be in the best interest of the supported person.

6 (b) If the judge of the family court having jurisdiction over the petition determines that the
7 verified petition demonstrates that the petitioner has been providing substantial care and support
8 to a supported person for a minimum of 12 consecutive months with the number of months to be
9 stated in the order, that the supported person is at least 16 years of age at the time of review of the
10 petition, and that the parents of the supported person have failed to provide any care and support
11 for the supported person other than *de minimis* acts for a minimum of 12 months, the judge shall
12 approve the petition and enter an order naming the petitioner to be the kinship legal guardian of the

13 child.

§44A-6-5. Order of approval.

1 (a) An order naming a kinship legal guardian shall determine that the petitioner, whether
2 related by blood or marriage to the supported person, is the party who has provided substantial
3 care and support to the supported person in the absence of substantial care and support of the
4 legal parents for at least 12 consecutive months prior to entry of the order.

5 (b) An order naming a kinship legal guardian shall not affect, terminate, or restrict the
6 parental rights of the parents of the supported person or any rights of the supported person to have
7 a continuing legal relationship with his or her parents.

8 (c) The court order of approval shall authorize the kinship legal guardian to continue to
9 provide substantial care and support for the supported person.

10 (d) The court order of approval shall be a sufficient basis for the kinship legal guardian to
11 claim an income tax exemption for the supported person.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-2. Family court jurisdiction; exceptions; limitations.

1 (a) The family court shall exercise jurisdiction over the following matters:

2 (1) All actions for divorce, annulment or separate maintenance brought under the
3 provisions of §48-3-1 *et seq.*, §48-4-1 *et seq.*, or §48-5-1 *et seq.* of this code, except as provided in
4 subsections (b) and (c) of this section;

5 (2) All actions to obtain orders of child support brought under the provisions of §48-11-1 *et*
6 *seq.*, §48-12-1 *et seq.*, and §48-14-1 *et seq.* of this code;

7 (3) All actions to establish paternity brought under the provisions of §48-24-1 *et seq.* of this
8 code and any dependent claims related to such actions regarding child support, parenting plans or
9 other allocation of custodial responsibility or decision-making responsibility for a child;

10 (4) All actions for grandparent visitation brought under the provisions of §48-10-1 *et seq.* of
11 this code;

12 (5) All actions for the interstate enforcement of family support brought under §48-16-1 *et*
13 *seq.* of this code and for the interstate enforcement of child custody brought under the provisions
14 of §48-20-1 *et seq.* of this code;

15 (6) All actions for the establishment of a parenting plan or other allocation of custodial
16 responsibility or decision-making responsibility for a child, including actions brought under the
17 Uniform Child Custody Jurisdiction and Enforcement Act, as provided in §48-20-1 *et seq.* of this
18 code;

19 (7) All petitions for writs of habeas corpus in which the issue contested is custodial
20 responsibility for a child;

21 (8) All motions for temporary relief affecting parenting plans or other allocation of custodial
22 responsibility or decision-making responsibility for a child, child support, spousal support or
23 domestic violence;

24 (9) All motions for modification of an order providing for a parenting plan or other allocation
25 of custodial responsibility or decision-making responsibility for a child or for child support or
26 spousal support;

27 (10) All actions brought, including civil contempt proceedings, to enforce an order of
28 spousal or child support or to enforce an order for a parenting plan or other allocation of custodial
29 responsibility or decision-making responsibility for a child;

30 (11) All actions brought by an obligor to contest the enforcement of an order of support
31 through the withholding from income of amounts payable as support or to contest an affidavit of
32 accrued support, filed with the circuit clerk, which seeks to collect an arrearage;

33 (12) All final hearings in domestic violence proceedings;

34 (13) Petitions for a change of name, exercising concurrent jurisdiction with the circuit court;

35 (14) All proceedings for payment of attorney fees if the family court judge has jurisdiction of
36 the underlying action;

37 (15) All proceedings for property distribution brought under §48-7-1 *et seq.* of this code;

38 (16) All proceedings to obtain spousal support brought under §48-8-1 *et seq.* of this code;

39 (17) All proceedings relating to the appointment of guardians or curators of minor children
40 brought pursuant to §44-10-3, §44-10-4 and §44-10-6 of this code, exercising concurrent
41 jurisdiction with the circuit court; and

42 (18) All proceedings relating to the appointment of a kinship legal guardian for a supported
43 person brought pursuant to §44A-6-1 *et seq.* of this code; and

44 ~~(18)~~ (19) All proceedings relating to petitions for sibling visitation.

45 (b) If an action for divorce, annulment, or separate maintenance does not require the
46 establishment of a parenting plan or other allocation of custodial responsibility or decision-making
47 responsibility for a child and does not require an award or any payment of child support, the circuit
48 court has concurrent jurisdiction with the family court over the action if, at the time of the filing of
49 the action, the parties also file a written property settlement agreement executed by both parties.

50 (c) If an action for divorce, annulment, or separate maintenance is pending and a petition is
51 filed pursuant to the provisions of §49-4-601 through §49-4-610 of this code alleging abuse or
52 neglect of a child by either of the parties to the divorce, annulment, or separate maintenance
53 action, the orders of the circuit court in which the abuse or neglect petition is filed shall supersede
54 and take precedence over an order of the family court respecting the allocation of custodial and
55 decision-making responsibility for the child between the parents. If no order for the allocation of
56 custodial and decision-making responsibility for the child between the parents has been entered
57 by the family court in the pending action for divorce, annulment, or separate maintenance, the
58 family court shall stay any further proceedings concerning the allocation of custodial and decision-
59 making responsibility for the child between the parents and defer to the orders of the circuit court in
60 the abuse or neglect proceedings.

61 (d) If a family court judge is assigned as a judicial officer of a domestic violence court then
62 jurisdiction of all proceedings relating to criminal misdemeanor crimes of domestic violence as
63 referenced in §48-27-301 of this code involving a family or household member as referenced in
64 §48-27-204(1) through §48-27-204(6) and §48-27-204(7)(A), §48-27-204(7)(B), and
65 §48-27-204(7)(H) of this code shall be concurrent with the circuit and magistrate courts.

66 (e) A family court is a court of limited jurisdiction. A family court is a court of record only for
67 the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family court is
68 specifically authorized in this section and in chapter 48 of this code. A family court may not
69 exercise the powers given courts of record in §51-5-1 of this code or exercise any other powers
70 provided for courts of record in this code unless specifically authorized by the Legislature. A family
71 court judge is not a “judge of any court of record” or a “judge of a court of record” as the terms are
72 defined and used in §51-9-1 *et seq.* of this code.

NOTE: The purpose of this bill is to provide a simple proceeding in family court to name a kinship legal guardianship where a person is unmarried and at least 16 years of age or older, and receives effectively no substantial care and support from his or her legal parents, but does receive such care and support from another person who petitions to be named a kinship legal guardian. The bill would clarify who provides substantial care and support for the supported person in the absence of such care and support by the parents. This clarification of support would not affect rights of the legal parents or the rights of the supported person.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.