

1 filing. If the child is a nonresident of this state and only the
2 guardianship of the estate is sought the petition may be filed in
3 the county in which the child has an estate.

4 (c) Any responsible person with knowledge of the facts
5 regarding the welfare and best interests of a minor may petition
6 for an appointment of a guardian except a parent or other person
7 whose rights to the minor have been terminated. No guardianship
8 petition may be considered if the child who is the subject of the
9 petition is involved in another court proceeding relating to
10 custody or guardianship or if the petitioner is a parent seeking
11 custodial rights adverse to the other parent.

12 (d) Within five days of the filing of a petition for the
13 appointment of a guardian, the circuit clerk shall notify the
14 court. The court shall hold a hearing upon the petition for the
15 appointment of a guardian within ten days after the petition is
16 filed. If all persons entitled to service have not been served at
17 least five days prior to the hearing or have not waived service the
18 court shall continue the hearing but may appoint a temporary
19 guardian pursuant to subsection (f) below.

20 (e) The court may appoint a guardian for a minor if the court
21 finds by clear and convincing evidence that the appointment is in
22 the minor's best interest and:

23 (1) The parents consent;

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

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

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

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

9 (f) Whether or not one or more of the conditions of subsection
10 (e) have been established, the court may appoint a temporary
11 guardian for a minor upon a showing that an immediate need exists
12 or that a period of transition into the custody of a parent is
13 needed so long as the appointment is in the best interest of the
14 minor. The temporary guardian has the authority of a guardian
15 appointed pursuant to subsection (e) but the duration of the
16 temporary guardianship may not exceed six months. A temporary
17 guardianship may be extended beyond six months upon further order
18 of the court finding continued need in the best interest of the
19 minor.

20 (g) Any suitable person may be appointed as the minor's
21 guardian. The father or mother shall receive priority subject only
22 to the provisions of subsections (c) and (e) above. However, in
23 every case the competency and fitness of the proposed guardian must

1 be established and a determination made that the appointment is in
2 the best interest of the child.

3 (h) The court, the guardian or the minor may revoke or
4 terminate the guardianship appointment when:

5 (1) The minor reaches the age of eighteen and executes a
6 release stating that the guardian's estate was properly
7 administered and that the minor has received the assets of the
8 estate from the guardian;

9 (2) The guardian or the minor dies;

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

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

17 (i) For a petition to revoke or terminate a guardianship filed
18 by a parent, the burden of proof is on the moving party to show by
19 a preponderance of the evidence that there has been a material
20 change of circumstances and that a revocation or termination is in
21 the child's best interest.

22 (j) A guardianship may not be terminated by the court if there
23 are any assets in the estate due and payable to the minor. Another

1 guardian may be appointed upon the resignation of a guardian
2 whenever there are assets in the estate due and payable to the
3 minor.

4 (k) Other than court orders and case indexes, all other
5 records of a guardian proceeding involving a minor are confidential
6 and shall not be disclosed to anyone who is not a party to the
7 proceeding, counsel of record for the proceeding, the court
8 presiding over the proceeding or other family or circuit court
9 presiding over another proceeding involving the minor absent a
10 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, strike-throughs and underscoring have been omitted.