

1 **H. B. 4565**

2  
3 (By Delegates Folk, Householder, Shott,  
4 Frich, Hunt, Barrett, Lynch, Ireland  
5 and Hamilton)  
6

7 [Introduced February 17, 2014; referred to the  
8 Committee on the Judiciary.]  
9

10 A BILL to amend and reenact §44A-2-7 of the Code of West Virginia,  
11 1931, as amended, relating to appointing counsel for an  
12 alleged protected person; and requiring the circuit court to  
13 make appointments from a listing of all interested and  
14 qualified attorneys in the circuit and on a rotating basis.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §44A-2-7 of the Code of West Virginia, 1931, as amended,  
17 be amended and reenacted to read as follows:

18 **ARTICLE 2. PROCEDURE FOR APPOINTMENT.**

19 **§44A-2-7. Appointment of counsel.**

20 (a) The court shall appoint legal counsel for the alleged  
21 protected person to make recommendations to the court that are in  
22 the best interests of the alleged protected person. In appointing  
23 legal counsel, the court shall consider any known preferences of  
24 the alleged protected person, or an alleged protected person may  
25 hire and pay for an attorney of his or her choice. Attorneys for

1 alleged protected persons shall be appointed by the circuit court  
2 from a listing of all interested and qualified attorneys in the  
3 circuit. These appointments shall be made on a rotating basis.

4 (b) Legal counsel shall have the following major areas of  
5 concern:

6 (1) Whether or not a guardian or conservator is needed;

7 (2) Limitation of the role of the guardian or conservator to  
8 the protected person's specific needs -- e.g., personal supervisor,  
9 business affairs, medical consent only;

10 (3) If needed, assure that the person or entity that will act  
11 in the best interest of the protected person is appointed;

12 (4) If needed, assure the adequacy of the bond; and

13 (5) If needed, assure consideration of proper placement.

14 (c) In responsibly pursuing the major areas of concern set  
15 forth in subsection (b) of this section, counsel may perform any or  
16 all of the following:

17 (1) Promptly notify the individual and any caretaker of the  
18 appointment of counsel;

19 (2) Contact any caretaker, review the file and all other  
20 relevant information;

21 (3) Maintain contact with the client throughout the case and  
22 assure that the client is receiving services as are appropriate to  
23 the client's needs;

24 (4) Contact persons who have or may have knowledge of the

- 1 client;
- 2 (5) Interview all possible witnesses;
- 3 (6) Pursue discovery of evidence, formal and informal,  
4 including obtaining medical and financial records;
- 5 (7) File appropriate motions, including temporary protective  
6 orders;
- 7 (8) Obtain independent psychological examinations, medical  
8 examinations, home studies, as needed;
- 9 (9) Advise the client on the ramifications of the proceeding  
10 and inquire into the specific interests and desires of the  
11 individual;
- 12 (10) Subpoena witnesses to the hearing;
- 13 (11) Prepare testimony for cross-examination of witnesses to  
14 assure relevant material is introduced;
- 15 (12) Review all medical reports;
- 16 (13) Apprise the decision maker of the individual's desires;
- 17 (14) Produce evidence on all relevant issues;
- 18 (15) Interpose objections to inadmissible testimony;
- 19 (16) Raise appropriate questions to all nominations for  
20 guardian and conservator and the adequacy of the bond;
- 21 (17) Take all steps to limit the scope of guardianship and  
22 conservatorship to the individual's actual needs, and make all  
23 arguments to limit the amount of the intervention;
- 24 (18) Ensure that the court considers all issues as to the

1 propriety of the individual's current or intended housing or  
2 placement and that the limitations are set forth in the order;

3 (19) Inform the client of the right to appeal, and file an  
4 appeal to an order when appropriate;

5 (20) File a motion for modification of an order or a petition  
6 for a writ of habeas corpus if a change of circumstances occurs  
7 which warrants a modification or termination upon counsel being  
8 reappointed by the court; and

9 (21) Otherwise zealously represent the interests and desires  
10 of the client while also reporting to the court what actions are in  
11 the best interests of the client.

12 (d) The protected person ~~shall have~~ has the right to an  
13 independent expert of his or her choice to perform an evaluation  
14 and present evidence.

15 (e) A person appointed by the court as counsel for a  
16 nonindigent alleged protected person shall inform the court or the  
17 mental hygiene commissioner of his or her hourly rate at the onset  
18 of the case and seek approval of his or her fee for the case by  
19 submitting it to the court or the mental hygiene commissioner for  
20 approval using forms provided by the West Virginia Supreme Court of  
21 Appeals. The hourly rate and fee for the case must be reasonable  
22 in light of the going rate for legal services, the complexity of  
23 the matter and the amount of legal work involved. The court may  
24 set the fee at the time of appointment.

NOTE: The purpose of this bill is to require the circuit courts, when appointing counsel for alleged protected persons, to make appointments from a listing of all interested and qualified attorneys in the circuit and on a rotating basis.

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