



Sen. Steve Stadelman

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09800SB1051sam001

LRB098 07179 HEP 59199 a

1 AMENDMENT TO SENATE BILL 1051

2 AMENDMENT NO. _____. Amend Senate Bill 1051 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Probate Act of 1975 is amended by changing
5 Sections 11a-9, 11a-11, and 11a-12 as follows:

6 (755 ILCS 5/11a-9) (from Ch. 110 1/2, par. 11a-9)
7 Sec. 11a-9. Report.)

8 (a) The petition for adjudication of disability and for
9 appointment of a guardian should be accompanied by a report
10 which contains (1) a description of the nature and type of the
11 respondent's disability and an assessment of how the disability
12 impacts on the ability of the respondent to make decisions or
13 to function independently; (2) an analysis and results of
14 evaluations of the respondent's mental and physical condition
15 and, where appropriate, educational condition, adaptive
16 behavior and social skills, which have been performed within 3

1 months of the date of the filing of the petition; (3) an
2 opinion as to whether guardianship is needed, the type and
3 scope of the guardianship needed, and the reasons therefor; (4)
4 a recommendation as to the most suitable living arrangement
5 and, where appropriate, treatment or habilitation plan for the
6 respondent and the reasons therefor; (5) the name, business
7 address, business telephone number, and ~~the~~ signatures of all
8 persons who performed the evaluations upon which the report is
9 based, one of whom shall be a licensed physician and a
10 statement of the certification, license, or other credentials
11 that qualify the evaluators who prepared the report.

12 (b) If for any reason no report accompanies the petition,
13 the court shall order appropriate evaluations to be performed
14 by a qualified person or persons and a report prepared and
15 filed with the court at least 10 days prior to the hearing.

16 (b-5) Upon oral or written motion by the respondent or the
17 guardian ad litem or upon the court's own motion, the court
18 shall appoint one or more independent experts to examine the
19 respondent. Upon the filing with the court of a verified
20 statement of services rendered by the expert or experts, the
21 court shall determine a reasonable fee for the services
22 performed. If the respondent is unable to pay the fee, the
23 court may enter an order upon the petitioner to pay the entire
24 fee or such amount as the respondent is unable to pay. However,
25 in cases where the Office of State Guardian is the petitioner,
26 consistent with Section 30 of the Guardianship and Advocacy

1 Act, no expert services fees shall be assessed against the
2 Office of the State Guardian.

3 (c) Unless the court otherwise directs, any report prepared
4 pursuant to this Section shall not be made part of the public
5 record of the proceedings but shall be available to the court
6 or an appellate court in which the proceedings are subject to
7 review, to the respondent, the petitioner, the guardian, and
8 their attorneys, to the respondent's guardian ad litem, and to
9 such other persons as the court may direct.

10 (Source: P.A. 89-396, eff. 8-20-95.)

11 (755 ILCS 5/11a-11) (from Ch. 110 1/2, par. 11a-11)

12 Sec. 11a-11. Hearing.

13 (a) The respondent is entitled to be represented by
14 counsel, to demand a jury of 6 persons, to present evidence,
15 and to confront and cross-examine all witnesses. The hearing
16 may be closed to the public on request of the respondent, the
17 guardian ad litem, or appointed or other counsel for the
18 respondent. Unless excused by the court upon a showing that the
19 respondent refuses to be present or will suffer harm if
20 required to attend, the respondent shall be present at the
21 hearing.

22 (b) (Blank) .

23 (c) (Blank) ~~Upon oral or written motion by the respondent~~
24 ~~or the guardian ad litem or on the court's own motion, the~~
25 ~~court shall appoint one or more independent experts to examine~~

1 ~~the respondent. Upon the filing with the court of a verified~~
2 ~~statement of services rendered by the expert or experts, the~~
3 ~~court shall determine a reasonable fee for the services~~
4 ~~performed. If the respondent is unable to pay the fee, the~~
5 ~~court may enter an order upon the petitioner to pay the entire~~
6 ~~fee or such amount as the respondent is unable to pay. However,~~
7 ~~in cases where the Office of State Guardian is the petitioner,~~
8 ~~consistent with Section 30 of the Guardianship and Advocacy~~
9 ~~Act, no expert services fees shall be assessed against the~~
10 ~~Office of the State Guardian.~~

11 (d) In an uncontested proceeding for the appointment of a
12 guardian the person who prepared the report required by Section
13 11a-9 will only be required to testify at trial upon order of
14 court for cause shown.

15 (e) At the hearing the court shall inquire regarding: (1)
16 the nature and extent of respondent's general intellectual and
17 physical functioning; (2) the extent of the impairment of his
18 adaptive behavior if he is a person with a developmental
19 disability, or the nature and severity of his mental illness if
20 he is a person with mental illness; (3) the understanding and
21 capacity of the respondent to make and communicate responsible
22 decisions concerning his person; (4) the capacity of the
23 respondent to manage his estate and his financial affairs; (5)
24 the appropriateness of proposed and alternate living
25 arrangements; (6) the impact of the disability upon the
26 respondent's functioning in the basic activities of daily

1 living and the important decisions faced by the respondent or
2 normally faced by adult members of the respondent's community;
3 and (7) any other area of inquiry deemed appropriate by the
4 court.

5 (f) An authenticated transcript of the evidence taken in a
6 judicial proceeding concerning the respondent under the Mental
7 Health and Developmental Disabilities Code is admissible in
8 evidence at the hearing.

9 (g) If the petition is for the appointment of a guardian
10 for a disabled beneficiary of the Veterans Administration, a
11 certificate of the Administrator of Veterans Affairs or his
12 representative stating that the beneficiary has been
13 determined to be incompetent by the Veterans Administration on
14 examination in accordance with the laws and regulations
15 governing the Veterans Administration in effect upon the date
16 of the issuance of the certificate and that the appointment of
17 a guardian is a condition precedent to the payment of any money
18 due the beneficiary by the Veterans Administration, is
19 admissible in evidence at the hearing.

20 (Source: P.A. 88-32; 88-380; 88-670, eff. 12-2-94; 89-396, eff.
21 8-20-95.)

22 (755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)
23 Sec. 11a-12. Order of appointment.)

24 (a) If basis for the appointment of a guardian as specified
25 in Section 11a-3 is not found, the court shall dismiss the

1 petition.

2 (b) If the respondent is adjudged to be disabled and to
3 lack some but not all of the capacity as specified in Section
4 11a-3, and if the court finds that guardianship is necessary
5 for the protection of the disabled person, his or her estate,
6 or both, the court shall appoint a limited guardian for the
7 respondent's person or estate or both. The court shall enter a
8 written order stating the factual basis for its findings and
9 specifying the duties and powers of the guardian and the legal
10 disabilities to which the respondent is subject.

11 (c) If the respondent is adjudged to be disabled and to be
12 totally without capacity as specified in Section 11a-3, and if
13 the court finds that limited guardianship will not provide
14 sufficient protection for the disabled person, his or her
15 estate, or both, the court shall appoint a plenary guardian for
16 the respondent's person or estate or both. The court shall
17 enter a written order stating the factual basis for its
18 findings.

19 (d) The selection of the guardian shall be in the
20 discretion of the court, which shall give due consideration to
21 the preference of the disabled person as to a guardian, as well
22 as the qualifications of the proposed guardian, in making its
23 appointment. However, the paramount concern in the selection of
24 the guardian is the best interest and well-being of the
25 disabled person.

26 (Source: P.A. 97-1093, eff. 1-1-13.)"