



Sen. Tim Bivins

Filed: 3/10/2017

10000SB1319sam001

LRB100 08450 HEP 23491 a

1 AMENDMENT TO SENATE BILL 1319

2 AMENDMENT NO. _____. Amend Senate Bill 1319 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Probate Act of 1975 is amended by adding
5 Sections 11a-10 and 11a-11.5 as follows:

6 (755 ILCS 5/11a-10) (from Ch. 110 1/2, par. 11a-10)

7 Sec. 11a-10. Procedures preliminary to hearing.

8 (a) Upon the filing of a petition pursuant to Section
9 11a-8, the court shall set a date and place for hearing to take
10 place within 30 days. The court shall appoint a guardian ad
11 litem to report to the court concerning the respondent's best
12 interests consistent with the provisions of this Section,
13 except that the appointment of a guardian ad litem shall not be
14 required when the court determines that such appointment is not
15 necessary for the protection of the respondent or a reasonably
16 informed decision on the petition. If the guardian ad litem is

1 not a licensed attorney, he or she shall be qualified, by
2 training or experience, to work with or advocate for persons
3 with developmental disabilities, the mentally ill, persons
4 with physical disabilities, the elderly, or persons with a
5 disability due to mental deterioration, depending on the type
6 of disability that is alleged in the petition. The court may
7 allow the guardian ad litem reasonable compensation. The
8 guardian ad litem may consult with a person who by training or
9 experience is qualified to work with persons with a
10 developmental disability, persons with mental illness, persons
11 with physical disabilities, or persons with a disability due to
12 mental deterioration, depending on the type of disability that
13 is alleged. The guardian ad litem shall personally observe the
14 respondent prior to the hearing and shall inform him orally and
15 in writing of the contents of the petition and of his rights
16 under Section 11a-11. The guardian ad litem shall also attempt
17 to elicit the respondent's position concerning the
18 adjudication of disability, the proposed guardian, a proposed
19 change in residential placement, changes in care that might
20 result from the guardianship, and other areas of inquiry deemed
21 appropriate by the court. Notwithstanding any provision in the
22 Mental Health and Developmental Disabilities Confidentiality
23 Act or any other law, a guardian ad litem shall have the right
24 to inspect and copy any medical or mental health record of the
25 respondent which the guardian ad litem deems necessary,
26 provided that the information so disclosed shall not be

1 utilized for any other purpose nor be redisclosed except in
2 connection with the proceedings. At or before the hearing, the
3 guardian ad litem shall file a written report detailing his or
4 her observations of the respondent, the responses of the
5 respondent to any of the inquiries detailed in this Section,
6 the opinion of the guardian ad litem or other professionals
7 with whom the guardian ad litem consulted concerning the
8 appropriateness of guardianship, and any other material issue
9 discovered by the guardian ad litem. The guardian ad litem
10 shall appear at the hearing and testify as to any issues
11 presented in his or her report.

12 (b) The court (1) may appoint counsel for the respondent,
13 if the court finds that the interests of the respondent will be
14 best served by the appointment, and (2) shall appoint counsel
15 upon respondent's request or if the respondent takes a position
16 adverse to that of the guardian ad litem. The respondent shall
17 be permitted to obtain the appointment of counsel either at the
18 hearing or by any written or oral request communicated to the
19 court prior to the hearing. The summons shall inform the
20 respondent of this right to obtain appointed counsel. The court
21 may allow counsel for the respondent reasonable compensation.

22 (c) If the respondent is unable to pay the fee of the
23 guardian ad litem or appointed counsel, or both, the court may
24 enter an order for the petitioner to pay all such fees or such
25 amounts as the respondent or the respondent's estate may be
26 unable to pay. However, in cases where the Office of State

1 Guardian is the petitioner, consistent with Section 30 of the
2 Guardianship and Advocacy Act, where the public guardian is the
3 petitioner, consistent with Section 13-5 of this Act, where an
4 adult protective services agency is the petitioner, pursuant to
5 Section 9 of the Adult Protective Services Act, or where the
6 Department of Children and Family Services is the petitioner
7 under subparagraph (d) of subsection (1) of Section 2-27 of the
8 Juvenile Court Act of 1987, no guardian ad litem or legal fees
9 shall be assessed against the Office of State Guardian, the
10 public guardian, the adult protective services agency, or the
11 Department of Children and Family Services.

12 (d) The hearing may be held at such convenient place as the
13 court directs, including at a facility in which the respondent
14 resides.

15 (e) Unless he is the petitioner, the respondent shall be
16 personally served with a copy of the petition and a summons not
17 less than 14 days before the hearing. The summons shall be
18 printed in large, bold type and shall include the following
19 notice:

20 NOTICE OF RIGHTS OF RESPONDENT

21 You have been named as a respondent in a guardianship
22 petition asking that you be declared a person with a
23 disability. If the court grants the petition, a guardian will
24 be appointed for you. A copy of the guardianship petition is
25 attached for your convenience.

26 The date and time of the hearing are:

1 The place where the hearing will occur is:

2 The Judge's name and phone number is:

3 If a guardian is appointed for you, the guardian may be
4 given the right to make all important personal decisions for
5 you, such as where you may live, what medical treatment you may
6 receive, what places you may visit, and who may visit you. A
7 guardian may also be given the right to control and manage your
8 money and other property, including your home, if you own one.
9 You may lose the right to make these decisions for yourself.

10 You have the following legal rights:

11 (1) You have the right to be present at the court
12 hearing.

13 (2) You have the right to be represented by a lawyer,
14 either one that you retain, or one appointed by the Judge.

15 (3) You have the right to ask for a jury of six persons
16 to hear your case.

17 (4) You have the right to present evidence to the court
18 and to confront and cross-examine witnesses.

19 (5) You have the right to ask the Judge to appoint an
20 independent expert to examine you and give an opinion about
21 your need for a guardian.

22 (6) You have the right to ask that the court hearing be
23 closed to the public.

24 (7) You have the right to tell the court whom you
25 prefer to have for your guardian.

26 You do not have to attend the court hearing if you do not

1 want to be there. If you do not attend, the Judge may appoint a
2 guardian if the Judge finds that a guardian would be of benefit
3 to you. The hearing will not be postponed or canceled if you do
4 not attend. If you are unable to attend the hearing in person
5 or will suffer harm if required to attend, the hearing may be
6 held at such convenient place as the court directs or the use
7 of video conferencing equipment may be permitted to ensure your
8 participation.

9 IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO
10 NOT WANT A GUARDIAN OR IF YOU WANT SOMEONE OTHER THAN THE
11 PERSON NAMED IN THE GUARDIANSHIP PETITION TO BE YOUR GUARDIAN.
12 IF YOU DO NOT WANT A GUARDIAN OR ~~OF~~ IF YOU HAVE ANY OTHER
13 PROBLEMS, YOU SHOULD CONTACT AN ATTORNEY OR COME TO COURT AND
14 TELL THE JUDGE.

15 Service of summons and the petition may be made by a
16 private person 18 years of age or over who is not a party to the
17 action.

18 (f) Notice of the time and place of the hearing shall be
19 given by the petitioner by mail or in person to those persons,
20 including the proposed guardian, whose names and addresses
21 appear in the petition and who do not waive notice, not less
22 than 14 days before the hearing.

23 (Source: P.A. 98-49, eff. 7-1-13; 98-89, eff. 7-15-13; 98-756,
24 eff. 7-16-14; 99-143, eff. 7-27-15; 99-642, eff. 7-28-16;
25 revised 10-27-16.)

1 (755 ILCS 5/11a-11.5 new)

2 Sec. 11a-11.5. Video conferencing. The Illinois Supreme
3 Court or any circuit court of this State may adopt rules
4 permitting the use of video conferencing equipment in any
5 hearing under Section 11a-11 upon a showing that all other
6 means of accommodating in-person testimony have been exhausted
7 or that a participant will suffer harm if required to attend in
8 person. If the parties, including the respondent, and their
9 attorneys agree, one or multiple participants may testify by
10 video conferencing equipment from any location in the absence
11 of a court rule specifically prohibiting that testimony and
12 notwithstanding any provisions of this Act to the contrary."