



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2348

by Rep. Mike Murphy

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-3	from Ch. 110 1/2, par. 11a-3
755 ILCS 5/11a-11	from Ch. 110 1/2, par. 11a-11
755 ILCS 5/11a-12	from Ch. 110 1/2, par. 11a-12

Amends the Probate Act of 1975. Provides that the court may issue an order that specifically grants the guardian the power to enforce the rights of the person with a disability to receive visitors, telephone calls, and personal mail. Provides that at a hearing, the court shall inquire, among other things, the recent history of the respondent's family care and visitation. Provides that the court shall, during the selection of the guardian, give due consideration to, among other things, any history of the proposed guardian having unreasonably isolated the respondent from any close family member who was a longstanding, frequent visitor or caregiver of the respondent. Provides that at the time of its initial hearing, the court may enter an order providing immediate visitation with the respondent by an adult child, spouse, grandchild, or sibling of the respondent who alleges that his or her visitation with the respondent is being unreasonably denied.

LRB101 07509 LNS 52553 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing
5 Sections 11a-3, 11a-11, and 11a-12 as follows:

6 (755 ILCS 5/11a-3) (from Ch. 110 1/2, par. 11a-3)

7 Sec. 11a-3. Adjudication of disability; Power to appoint
8 guardian.

9 (a) Upon the filing of a petition by a reputable person or
10 by the alleged person with a disability himself or on its own
11 motion, the court may adjudge a person to be a person with a
12 disability, but only if it has been demonstrated by clear and
13 convincing evidence that the person is a person with a
14 disability as defined in Section 11a-2. If the court adjudges a
15 person to be a person with a disability, the court may appoint
16 (1) a guardian of his person, if it has been demonstrated by
17 clear and convincing evidence that because of his disability he
18 lacks sufficient understanding or capacity to make or
19 communicate responsible decisions concerning the care of his
20 person, or (2) a guardian of his estate, if it has been
21 demonstrated by clear and convincing evidence that because of
22 his disability he is unable to manage his estate or financial
23 affairs, or (3) a guardian of his person and of his estate.

1 (b) Guardianship shall be utilized only as is necessary to
2 promote the well-being of the person with a disability, to
3 protect him from neglect, exploitation, or abuse, and to
4 encourage development of his maximum self-reliance and
5 independence including, but not limited to, the right to
6 receive visitors, telephone calls, and personal mail, unless
7 specifically limited by court order. The court may issue an
8 order that specifically grants the guardian the power to
9 enforce the rights of the person with a disability to receive
10 visitors, telephone calls, and personal mail, or that directs
11 the guardian to allow those visitors, telephone calls, and
12 personal mail. Guardianship shall be ordered only to the extent
13 necessitated by the individual's actual mental, physical and
14 adaptive limitations.

15 (Source: P.A. 99-143, eff. 7-27-15.)

16 (755 ILCS 5/11a-11) (from Ch. 110 1/2, par. 11a-11)

17 Sec. 11a-11. Hearing.

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

1 hearing.

2 (b) (Blank).

3 (c) (Blank).

4 (d) In an uncontested proceeding for the appointment of a
5 guardian the person who prepared the report required by Section
6 11a-9 will only be required to testify at trial upon order of
7 court for cause shown.

8 (e) At the hearing the court shall inquire regarding: (1)
9 the nature and extent of respondent's general intellectual and
10 physical functioning; (2) the extent of the impairment of his
11 adaptive behavior if he is a person with a developmental
12 disability, or the nature and severity of his mental illness if
13 he is a person with mental illness; (3) the understanding and
14 capacity of the respondent to make and communicate responsible
15 decisions concerning his person; (4) the capacity of the
16 respondent to manage his estate and his financial affairs; (5)
17 the appropriateness of proposed and alternate living
18 arrangements; (6) the impact of the disability upon the
19 respondent's functioning in the basic activities of daily
20 living and the important decisions faced by the respondent or
21 normally faced by adult members of the respondent's community;
22 ~~and~~ (7) the recent history of the respondent's family care and
23 visitation, including any isolation of the respondent from a
24 close family member who had been a long-time, frequent visitor
25 or caregiver of the respondent; and (8) any other area of
26 inquiry deemed appropriate by the court.

1 (f) An authenticated transcript of the evidence taken in a
2 judicial proceeding concerning the respondent under the Mental
3 Health and Developmental Disabilities Code is admissible in
4 evidence at the hearing.

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

16 (Source: P.A. 98-1094, eff. 1-1-15; 99-143, eff. 7-27-15.)

17 (755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)

18 Sec. 11a-12. Order of appointment.→

19 (a) If basis for the appointment of a guardian as specified
20 in Section 11a-3 is not found, the court shall dismiss the
21 petition.

22 (b) If the respondent is adjudged to be a person with a
23 disability and to lack some but not all of the capacity as
24 specified in Section 11a-3, and if the court finds that
25 guardianship is necessary for the protection of the person with

1 a disability, his or her estate, or both, the court shall
2 appoint a limited guardian for the respondent's person or
3 estate or both. The court shall enter a written order stating
4 the factual basis for its findings and specifying the duties
5 and powers of the guardian and the legal disabilities to which
6 the respondent is subject.

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

15 (d) The selection of the guardian shall be in the
16 discretion of the court, which shall give due consideration to
17 the preference of the person with a disability as to a
18 guardian, as well as the qualifications of the proposed
19 guardian and any history of the proposed guardian having
20 unreasonably isolated the respondent from any family member who
21 was a longstanding, frequent visitor or caregiver of the
22 respondent, in making its appointment. At the time of its
23 initial hearing, the court may enter an order providing
24 immediate visitation with the respondent by an adult child,
25 spouse, grandchild, or sibling of the respondent who, in a
26 certified objection to the proposed petition for guardianship,

1 alleges that his or her visitation with the respondent is being
2 unreasonably denied. However, the paramount concern in the
3 selection of the guardian is the best interest and well-being
4 of the person with a disability.

5 (e) The order of appointment of a guardian of the person in
6 any county with a population of less than 3 million shall
7 include the requirement that the guardian of the person
8 complete the training program as provided in Section 33.5 of
9 the Guardianship and Advocacy Act that outlines the
10 responsibilities of the guardian of the person and the rights
11 of the person under guardianship and file with the court a
12 certificate of completion one year from the date of issuance of
13 the letters of guardianship, except that: (1) the chief judge
14 of any circuit may order implementation of another training
15 program by a suitable provider containing substantially
16 similar content; (2) employees of the Office of the State
17 Guardian, public guardians, attorneys currently authorized to
18 practice law, corporate fiduciaries, and persons certified by
19 the Center for Guardianship Certification are exempt from this
20 training requirement; and (3) the court may, for good cause
21 shown, exempt from this requirement an individual not otherwise
22 listed in item (2). For the purposes of this subsection (e),
23 good cause may be proven by affidavit. If the court finds good
24 cause to exempt an individual from the training requirement,
25 the order of appointment shall so state.

26 (Source: P.A. 99-143, eff. 7-27-15; 100-483, eff. 9-8-18.)