

HB4366



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4366

Introduced 1/5/2022, by Rep. William Davis

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-12

from Ch. 110 1/2, par. 11a-12

Amends the Guardians For Adults With Disabilities Article of the Probate Act of 1975. Removes a provision that exempts a guardian of the person appointed in county with a population of more than 3,000,000 from completing a training program created under the Guardianship and Advocacy Act.

LRB102 23003 LNS 32157 b

A BILL FOR

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 Section 11a-12 as follows:

6 (755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)

7 (Text of Section before amendment by P.A. 102-72)

8 Sec. 11a-12. Order of appointment.)

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

12 (b) If the respondent is adjudged to be a person with a
13 disability and to lack some but not all of the capacity as
14 specified in Section 11a-3, and if the court finds that
15 guardianship is necessary for the protection of the person
16 with a disability, his or her estate, or both, the court shall
17 appoint a limited guardian for the respondent's person or
18 estate or both. The court shall enter a written order stating
19 the factual basis for its findings and specifying the duties
20 and powers of the guardian and the legal disabilities to which
21 the respondent is subject.

22 (c) If the respondent is adjudged to be a person with a
23 disability and to be totally without capacity as specified in

1 Section 11a-3, and if the court finds that limited
2 guardianship will not provide sufficient protection for the
3 person with a disability, his or her estate, or both, the court
4 shall appoint a plenary guardian for the respondent's person
5 or estate or both. The court shall enter a written order
6 stating the factual basis for its findings.

7 (d) The selection of the guardian shall be in the
8 discretion of the court, which shall give due consideration to
9 the preference of the person with a disability as to a
10 guardian, as well as the qualifications of the proposed
11 guardian, in making its appointment. However, the paramount
12 concern in the selection of the guardian is the best interest
13 and well-being of the person with a disability.

14 (e) The order of appointment of a guardian of the person in
15 any county with a population of less than 3 million shall
16 include the requirement that the guardian of the person
17 complete the training program as provided in Section 33.5 of
18 the Guardianship and Advocacy Act that outlines the
19 responsibilities of the guardian of the person and the rights
20 of the person under guardianship and file with the court a
21 certificate of completion one year from the date of issuance
22 of the letters of guardianship, except that: (1) the chief
23 judge of any circuit may order implementation of another
24 training program by a suitable provider containing
25 substantially similar content; (2) employees of the Office of
26 the State Guardian, public guardians, attorneys currently

1 authorized to practice law, corporate fiduciaries, and persons
2 certified by the Center for Guardianship Certification are
3 exempt from this training requirement; and (3) the court may,
4 for good cause shown, exempt from this requirement an
5 individual not otherwise listed in item (2). For the purposes
6 of this subsection (e), good cause may be proven by affidavit.
7 If the court finds good cause to exempt an individual from the
8 training requirement, the order of appointment shall so state.
9 (Source: P.A. 99-143, eff. 7-27-15; 100-483, eff. 9-8-18.)

10 (Text of Section after amendment by P.A. 102-72)

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

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

15 (b) If the respondent is adjudged to be a person with a
16 disability and to lack some but not all of the capacity as
17 specified in Section 11a-3, and if the court finds that
18 guardianship is necessary for the protection of the person
19 with a disability, his or her estate, or both, the court shall
20 appoint a limited guardian for the respondent's person or
21 estate or both. The court shall enter a written order stating
22 the factual basis for its findings and specifying the duties
23 and powers of the guardian and the legal disabilities to which
24 the respondent is subject.

25 (c) If the respondent is adjudged to be a person with a

1 disability and to be totally without capacity as specified in
2 Section 11a-3, and if the court finds that limited
3 guardianship will not provide sufficient protection for the
4 person with a disability, his or her estate, or both, the court
5 shall appoint a plenary guardian for the respondent's person
6 or estate or both. The court shall enter a written order
7 stating the factual basis for its findings.

8 (d) The selection of the guardian shall be in the
9 discretion of the court, which shall give due consideration to
10 the preference of the person with a disability as to a
11 guardian, as well as the qualifications of the proposed
12 guardian, in making its appointment. However, the paramount
13 concern in the selection of the guardian is the best interests
14 and well-being of the person with a disability.

15 One person or agency may be appointed a limited or plenary
16 guardian of the person and another person or corporate trustee
17 appointed as a limited or plenary guardian of the estate. If
18 different persons are appointed, the court shall consider the
19 factors set forth in subsection (b-5) of Section 11a-5. The
20 court shall enter a written order stating the factual basis
21 for its findings.

22 (e) The order of appointment of a guardian of the person ~~in~~
23 ~~any county with a population of less than 3 million~~ shall
24 include the requirement that the guardian of the person
25 complete the training program as provided in Section 33.5 of
26 the Guardianship and Advocacy Act that outlines the

1 responsibilities of the guardian of the person and the rights
2 of the person under guardianship and file with the court a
3 certificate of completion one year from the date of issuance
4 of the letters of guardianship, except that: (1) the chief
5 judge of any circuit may order implementation of another
6 training program by a suitable provider containing
7 substantially similar content; (2) employees of the Office of
8 the State Guardian, public guardians, attorneys currently
9 authorized to practice law, corporate fiduciaries, and persons
10 certified by the Center for Guardianship Certification are
11 exempt from this training requirement; and (3) the court may,
12 for good cause shown, exempt from this requirement an
13 individual not otherwise listed in item (2). For the purposes
14 of this subsection (e), good cause may be proven by affidavit.
15 If the court finds good cause to exempt an individual from the
16 training requirement, the order of appointment shall so state.
17 (Source: P.A. 102-72, eff. 1-1-22.)

18 Section 95. No acceleration or delay. Where this Act makes
19 changes in a statute that is represented in this Act by text
20 that is not yet or no longer in effect (for example, a Section
21 represented by multiple versions), the use of that text does
22 not accelerate or delay the taking effect of (i) the changes
23 made by this Act or (ii) provisions derived from any other
24 Public Act.