



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4831

Introduced 1/27/2022, by Rep. Daniel Didech

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-9
755 ILCS 5/11a-18

from Ch. 110 1/2, par. 11a-9
from Ch. 110 1/2, par. 11a-18

Amends the Guardians for Adults with Disabilities Article of the Probate Act of 1975. Deletes language providing that the required report for a petition for adjudication of disability, in the case of an intellectual disability, may contain a psychological evaluation of the respondent that has been performed by a clinical psychologist licensed under the Clinical Psychologist Licensing Act, within one year of the date of the filing of the petition. Provides instead that the required report that is attached to a petition for adjudication of disability and for appointment of a guardian may contain a psychological evaluation that assesses the cognitive, emotional, and functional capacities of the respondent and that has been performed by a licensed clinical psychologist within 3 months of the date of the filing of the petition or within one year of the date of the filing of the petition in the case of an individual with an intellectual disability. Makes a corresponding change Effective immediately.

LRB102 23971 LNS 33176 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-9 and 11a-18 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, the respondent's ability to fully
12 manage the respondent's estate or person, and an assessment of
13 how the disability impacts on the ability of the respondent to
14 make decisions or to function independently; (2) an analysis
15 and results of evaluations of the respondent's mental and
16 physical condition and, where appropriate, educational
17 condition, adaptive behavior and social skills, which have
18 been performed within 3 months of the date of the filing of the
19 petition, or a psychological evaluation that assesses the
20 cognitive, emotional, and functional capacities of the
21 respondent and that has been performed by a licensed clinical
22 psychologist under the Clinical Psychologist Licensing Act
23 within 3 months of the date of the filing of the petition or

1 within one year of the date of the filing of the petition in
2 the case of an individual with an intellectual disability,~~in~~
3 ~~the case of an intellectual disability, a psychological~~
4 ~~evaluation of the respondent that has been performed by a~~
5 ~~clinical psychologist licensed under the Clinical Psychologist~~
6 ~~Licensing Act, within one year of the date of the filing of the~~
7 ~~petition;~~ (3) an opinion as to whether guardianship is needed,
8 the type and scope of the guardianship needed, and the reasons
9 therefor; (4) a recommendation as to the most suitable living
10 arrangement and, where appropriate, treatment or habilitation
11 plan for the respondent and the reasons therefor; (5) the
12 name, business address, business telephone number, and
13 signatures of all persons who performed the evaluations upon
14 which the report is based, one of whom shall be a licensed
15 physician, ~~or may, in the case of an intellectual disability,~~
16 ~~be~~ a licensed clinical psychologist ~~licensed~~ under the
17 Clinical Psychologist Licensing Act, and a statement of the
18 certification, license, or other credentials that qualify the
19 evaluators who prepared the report.

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

24 (b-5) Upon oral or written motion by the respondent or the
25 guardian ad litem or upon the court's own motion, the court
26 shall appoint one or more independent experts to examine the

1 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 (c) Unless the court otherwise directs, any report
12 prepared pursuant to this Section shall not be made part of the
13 public record of the proceedings but shall be available to the
14 court or an appellate court in which the proceedings are
15 subject to review, to the respondent, the petitioner, the
16 guardian, and their attorneys, to the respondent's guardian ad
17 litem, and to such other persons as the court may direct.

18 (Source: P.A. 102-109, eff. 1-1-22.)

19 (755 ILCS 5/11a-18) (from Ch. 110 1/2, par. 11a-18)

20 Sec. 11a-18. Duties of the estate guardian.

21 (a) To the extent specified in the order establishing the
22 guardianship, the guardian of the estate shall have the care,
23 management and investment of the estate, shall manage the
24 estate frugally and shall apply the income and principal of
25 the estate so far as necessary for the comfort and suitable

1 support and education of the ward, his minor and adult
2 dependent children, and persons related by blood or marriage
3 who are dependent upon or entitled to support from him, or for
4 any other purpose which the court deems to be for the best
5 interests of the ward, and the court may approve the making on
6 behalf of the ward of such agreements as the court determines
7 to be for the ward's best interests. The guardian may make
8 disbursement of his ward's funds and estate directly to the
9 ward or other distributee or in such other manner and in such
10 amounts as the court directs. If the estate of a ward is
11 derived in whole or in part from payments of compensation,
12 adjusted compensation, pension, insurance or other similar
13 benefits made directly to the estate by the Veterans
14 Administration, notice of the application for leave to invest
15 or expend the ward's funds or estate, together with a copy of
16 the petition and proposed order, shall be given to the
17 Veterans' Administration Regional Office in this State at
18 least 7 days before the hearing on the application.

19 (a-5) The probate court, upon petition of a guardian,
20 other than the guardian of a minor, and after notice to all
21 other persons interested as the court directs, may authorize
22 the guardian to exercise any or all powers over the estate and
23 business affairs of the ward that the ward could exercise if
24 present and not under disability. The court may authorize the
25 taking of an action or the application of funds not required
26 for the ward's current and future maintenance and support in

1 any manner approved by the court as being in keeping with the
2 ward's wishes so far as they can be ascertained. The court must
3 consider the permanence of the ward's disabling condition and
4 the natural objects of the ward's bounty. In ascertaining and
5 carrying out the ward's wishes the court may consider, but
6 shall not be limited to, minimization of State or federal
7 income, estate, or inheritance taxes; and providing gifts to
8 charities, relatives, and friends that would be likely
9 recipients of donations from the ward. The ward's wishes as
10 best they can be ascertained shall be carried out, whether or
11 not tax savings are involved. Actions or applications of funds
12 may include, but shall not be limited to, the following:

13 (1) making gifts of income or principal, or both, of
14 the estate, either outright or in trust;

15 (2) conveying, releasing, or disclaiming his or her
16 contingent and expectant interests in property, including
17 marital property rights and any right of survivorship
18 incident to joint tenancy or tenancy by the entirety;

19 (3) releasing or disclaiming his or her powers as
20 trustee, personal representative, custodian for minors, or
21 guardian;

22 (4) exercising, releasing, or disclaiming his or her
23 powers as donee of a power of appointment;

24 (5) entering into contracts;

25 (6) creating for the benefit of the ward or others,
26 revocable or irrevocable trusts of his or her property

1 that may extend beyond his or her disability or life;

2 (7) exercising options of the ward to purchase or
3 exchange securities or other property;

4 (8) exercising the rights of the ward to elect benefit
5 or payment options, to terminate, to change beneficiaries
6 or ownership, to assign rights, to borrow, or to receive
7 cash value in return for a surrender of rights under any
8 one or more of the following:

9 (i) life insurance policies, plans, or benefits,

10 (ii) annuity policies, plans, or benefits,

11 (iii) mutual fund and other dividend investment
12 plans,

13 (iv) retirement, profit sharing, and employee
14 welfare plans and benefits;

15 (9) exercising his or her right to claim or disclaim
16 an elective share in the estate of his or her deceased
17 spouse and to renounce any interest by testate or
18 intestate succession or by inter vivos transfer;

19 (10) changing the ward's residence or domicile; or

20 (11) modifying by means of codicil or trust amendment
21 the terms of the ward's will or any revocable trust
22 created by the ward, as the court may consider advisable
23 in light of changes in applicable tax laws.

24 The guardian in his or her petition shall briefly outline
25 the action or application of funds for which he or she seeks
26 approval, the results expected to be accomplished thereby, and

1 the tax savings, if any, expected to accrue. The proposed
2 action or application of funds may include gifts of the ward's
3 personal property or real estate, but transfers of real estate
4 shall be subject to the requirements of Section 20 of this Act.
5 Gifts may be for the benefit of prospective legatees,
6 devisees, or heirs apparent of the ward or may be made to
7 individuals or charities in which the ward is believed to have
8 an interest. The guardian shall also indicate in the petition
9 that any planned disposition is consistent with the intentions
10 of the ward insofar as they can be ascertained, and if the
11 ward's intentions cannot be ascertained, the ward will be
12 presumed to favor reduction in the incidents of various forms
13 of taxation and the partial distribution of his or her estate
14 as provided in this subsection. The guardian shall not,
15 however, be required to include as a beneficiary or fiduciary
16 any person who he has reason to believe would be excluded by
17 the ward. A guardian shall be required to investigate and
18 pursue a ward's eligibility for governmental benefits.

19 (a-6) The guardian may, without an order of court, open,
20 maintain, and transfer funds to an ABLE account on behalf of
21 the ward and the ward's minor and adult dependent children as
22 specified under Section 16.6 of the State Treasurer Act.

23 (b) Upon the direction of the court which issued his
24 letters, a guardian may perform the contracts of his ward
25 which were legally subsisting at the time of the commencement
26 of the ward's disability. The court may authorize the guardian

1 to execute and deliver any bill of sale, deed or other
2 instrument.

3 (c) The guardian of the estate of a ward shall appear for
4 and represent the ward in all legal proceedings unless another
5 person is appointed for that purpose as guardian or next
6 friend. This does not impair the power of any court to appoint
7 a guardian ad litem or next friend to defend the interests of
8 the ward in that court, or to appoint or allow any person as
9 the next friend of a ward to commence, prosecute or defend any
10 proceeding in his behalf. Without impairing the power of the
11 court in any respect, if the guardian of the estate of a ward
12 and another person as next friend shall appear for and
13 represent the ward in a legal proceeding in which the
14 compensation of the attorney or attorneys representing the
15 guardian and next friend is solely determined under a
16 contingent fee arrangement, the guardian of the estate of the
17 ward shall not participate in or have any duty to review the
18 prosecution of the action, to participate in or review the
19 appropriateness of any settlement of the action, or to
20 participate in or review any determination of the
21 appropriateness of any fees awarded to the attorney or
22 attorneys employed in the prosecution of the action.

23 (d) Adjudication of disability shall not revoke or
24 otherwise terminate a trust which is revocable by the ward. A
25 guardian of the estate shall have no authority to revoke a
26 trust that is revocable by the ward, except that the court may

1 authorize a guardian to revoke a Totten trust or similar
2 deposit or withdrawable capital account in trust to the extent
3 necessary to provide funds for the purposes specified in
4 paragraph (a) of this Section. If the trustee of any trust for
5 the benefit of the ward has discretionary power to apply
6 income or principal for the ward's benefit, the trustee shall
7 not be required to distribute any of the income or principal to
8 the guardian of the ward's estate, but the guardian may bring
9 an action on behalf of the ward to compel the trustee to
10 exercise the trustee's discretion or to seek relief from an
11 abuse of discretion. This paragraph shall not limit the right
12 of a guardian of the estate to receive accountings from the
13 trustee on behalf of the ward.

14 (d-5) Upon a verified petition by the plenary or limited
15 guardian of the estate or the request of the ward that is
16 accompanied by a current physician's or a licensed clinical
17 psychologist's report that states the ward possesses
18 testamentary capacity, the court may enter an order
19 authorizing the ward to execute a will or codicil. In so
20 ordering, the court shall authorize the guardian to retain
21 independent counsel for the ward with whom the ward may
22 execute or modify a will or codicil.

23 (e) Absent court order pursuant to the Illinois Power of
24 Attorney Act directing a guardian to exercise powers of the
25 principal under an agency that survives disability, the
26 guardian will have no power, duty or liability with respect to

1 any property subject to the agency. This subsection (e)
2 applies to all agencies, whenever and wherever executed.

3 (f) Upon petition by any interested person (including the
4 standby or short-term guardian), with such notice to
5 interested persons as the court directs and a finding by the
6 court that it is in the best interests of the person with a
7 disability, the court may terminate or limit the authority of
8 a standby or short-term guardian or may enter such other
9 orders as the court deems necessary to provide for the best
10 interests of the person with a disability. The petition for
11 termination or limitation of the authority of a standby or
12 short-term guardian may, but need not, be combined with a
13 petition to have another guardian appointed for the person
14 with a disability.

15 (Source: P.A. 101-329, eff. 8-9-19; 102-72, eff. 1-1-22.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.