



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1576

Introduced 2/26/2021, by Sen. Robert F. Martwick

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-9

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

755 ILCS 5/11a-18

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

Amends the Guardians for Adults with Disabilities Article of the Probate Act of 1975. Provides that the required report that is attached to a petition for adjudication of disability and for appointment of a guardian may contain a psychological and mental capacity evaluation of the respondent that has been performed by a licensed clinical psychologist within 3 months of the date of the filing of the petition. Makes a corresponding change. Provides that the court may enter an order authorizing the ward to execute a will or codicil upon the request of the ward that is accompanied by a current licensed clinical psychologist's (as an alternative to a physician's) report that states the ward possesses testamentary capacity. Effective immediately.

LRB102 14665 LNS 20018 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 and an assessment of how the
12 disability impacts on the ability of the respondent to make
13 decisions or to function independently; (2) an analysis and
14 results of evaluations of the respondent's mental and physical
15 condition and, where appropriate, educational condition,
16 adaptive behavior, and social skills, which have been
17 performed within 3 months of the date of the filing of the
18 petition, or a psychological and mental capacity evaluation of
19 the respondent that has been performed by a licensed clinical
20 psychologist within 3 months of the date of the filing of the
21 petition; (3) an opinion as to whether guardianship is needed,
22 the type and scope of the guardianship needed, and the reasons
23 therefor; (4) a recommendation as to the most suitable living

1 arrangement and, where appropriate, treatment or habilitation
2 plan for the respondent and the reasons therefor; (5) the
3 name, business address, business telephone number, and
4 signatures of all persons who performed the evaluations upon
5 which the report is based, one of whom shall be a licensed
6 physician or a licensed clinical psychologist and a statement
7 of the certification, license, or other credentials that
8 qualify the evaluators who prepared the report.

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

13 (b-5) Upon oral or written motion by the respondent or the
14 guardian ad litem or upon the court's own motion, the court
15 shall appoint one or more independent experts to examine the
16 respondent. Upon the filing with the court of a verified
17 statement of services rendered by the expert or experts, the
18 court shall determine a reasonable fee for the services
19 performed. If the respondent is unable to pay the fee, the
20 court may enter an order upon the petitioner to pay the entire
21 fee or such amount as the respondent is unable to pay. However,
22 in cases where the Office of State Guardian is the petitioner,
23 consistent with Section 30 of the Guardianship and Advocacy
24 Act, no expert services fees shall be assessed against the
25 Office of the State Guardian.

26 (c) Unless the court otherwise directs, any report

1 prepared pursuant to this Section shall not be made part of the
2 public record of the proceedings but shall be available to the
3 court or an appellate court in which the proceedings are
4 subject to review, to the respondent, the petitioner, the
5 guardian, and their attorneys, to the respondent's guardian ad
6 litem, and to such other persons as the court may direct.

7 (Source: P.A. 98-1094, eff. 1-1-15.)

8 (755 ILCS 5/11a-18) (from Ch. 110 1/2, par. 11a-18)

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

10 (a) To the extent specified in the order establishing the
11 guardianship, the guardian of the estate shall have the care,
12 management and investment of the estate, shall manage the
13 estate frugally and shall apply the income and principal of
14 the estate so far as necessary for the comfort and suitable
15 support and education of the ward, his minor and adult
16 dependent children, and persons related by blood or marriage
17 who are dependent upon or entitled to support from him, or for
18 any other purpose which the court deems to be for the best
19 interests of the ward, and the court may approve the making on
20 behalf of the ward of such agreements as the court determines
21 to be for the ward's best interests. The guardian may make
22 disbursement of his ward's funds and estate directly to the
23 ward or other distributee or in such other manner and in such
24 amounts as the court directs. If the estate of a ward is
25 derived in whole or in part from payments of compensation,

1 adjusted compensation, pension, insurance or other similar
2 benefits made directly to the estate by the Veterans
3 Administration, notice of the application for leave to invest
4 or expend the ward's funds or estate, together with a copy of
5 the petition and proposed order, shall be given to the
6 Veterans' Administration Regional Office in this State at
7 least 7 days before the hearing on the application.

8 (a-5) The probate court, upon petition of a guardian,
9 other than the guardian of a minor, and after notice to all
10 other persons interested as the court directs, may authorize
11 the guardian to exercise any or all powers over the estate and
12 business affairs of the ward that the ward could exercise if
13 present and not under disability. The court may authorize the
14 taking of an action or the application of funds not required
15 for the ward's current and future maintenance and support in
16 any manner approved by the court as being in keeping with the
17 ward's wishes so far as they can be ascertained. The court must
18 consider the permanence of the ward's disabling condition and
19 the natural objects of the ward's bounty. In ascertaining and
20 carrying out the ward's wishes the court may consider, but
21 shall not be limited to, minimization of State or federal
22 income, estate, or inheritance taxes; and providing gifts to
23 charities, relatives, and friends that would be likely
24 recipients of donations from the ward. The ward's wishes as
25 best they can be ascertained shall be carried out, whether or
26 not tax savings are involved. Actions or applications of funds

1 may include, but shall not be limited to, the following:

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

4 (2) conveying, releasing, or disclaiming his or her
5 contingent and expectant interests in property, including
6 marital property rights and any right of survivorship
7 incident to joint tenancy or tenancy by the entirety;

8 (3) releasing or disclaiming his or her powers as
9 trustee, personal representative, custodian for minors, or
10 guardian;

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

13 (5) entering into contracts;

14 (6) creating for the benefit of the ward or others,
15 revocable or irrevocable trusts of his or her property
16 that may extend beyond his or her disability or life;

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

19 (8) exercising the rights of the ward to elect benefit
20 or payment options, to terminate, to change beneficiaries
21 or ownership, to assign rights, to borrow, or to receive
22 cash value in return for a surrender of rights under any
23 one or more of the following:

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

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

26 (iii) mutual fund and other dividend investment

1 plans,

2 (iv) retirement, profit sharing, and employee
3 welfare plans and benefits;

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

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

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

13 The guardian in his or her petition shall briefly outline
14 the action or application of funds for which he or she seeks
15 approval, the results expected to be accomplished thereby, and
16 the tax savings, if any, expected to accrue. The proposed
17 action or application of funds may include gifts of the ward's
18 personal property or real estate, but transfers of real estate
19 shall be subject to the requirements of Section 20 of this Act.
20 Gifts may be for the benefit of prospective legatees,
21 devisees, or heirs apparent of the ward or may be made to
22 individuals or charities in which the ward is believed to have
23 an interest. The guardian shall also indicate in the petition
24 that any planned disposition is consistent with the intentions
25 of the ward insofar as they can be ascertained, and if the
26 ward's intentions cannot be ascertained, the ward will be

1 presumed to favor reduction in the incidents of various forms
2 of taxation and the partial distribution of his or her estate
3 as provided in this subsection. The guardian shall not,
4 however, be required to include as a beneficiary or fiduciary
5 any person who he has reason to believe would be excluded by
6 the ward. A guardian shall be required to investigate and
7 pursue a ward's eligibility for governmental benefits.

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

12 (b) Upon the direction of the court which issued his
13 letters, a guardian may perform the contracts of his ward
14 which were legally subsisting at the time of the commencement
15 of the ward's disability. The court may authorize the guardian
16 to execute and deliver any bill of sale, deed or other
17 instrument.

18 (c) The guardian of the estate of a ward shall appear for
19 and represent the ward in all legal proceedings unless another
20 person is appointed for that purpose as guardian or next
21 friend. This does not impair the power of any court to appoint
22 a guardian ad litem or next friend to defend the interests of
23 the ward in that court, or to appoint or allow any person as
24 the next friend of a ward to commence, prosecute or defend any
25 proceeding in his behalf. Without impairing the power of the
26 court in any respect, if the guardian of the estate of a ward

1 and another person as next friend shall appear for and
2 represent the ward in a legal proceeding in which the
3 compensation of the attorney or attorneys representing the
4 guardian and next friend is solely determined under a
5 contingent fee arrangement, the guardian of the estate of the
6 ward shall not participate in or have any duty to review the
7 prosecution of the action, to participate in or review the
8 appropriateness of any settlement of the action, or to
9 participate in or review any determination of the
10 appropriateness of any fees awarded to the attorney or
11 attorneys employed in the prosecution of the action.

12 (d) Adjudication of disability shall not revoke or
13 otherwise terminate a trust which is revocable by the ward. A
14 guardian of the estate shall have no authority to revoke a
15 trust that is revocable by the ward, except that the court may
16 authorize a guardian to revoke a Totten trust or similar
17 deposit or withdrawable capital account in trust to the extent
18 necessary to provide funds for the purposes specified in
19 paragraph (a) of this Section. If the trustee of any trust for
20 the benefit of the ward has discretionary power to apply
21 income or principal for the ward's benefit, the trustee shall
22 not be required to distribute any of the income or principal to
23 the guardian of the ward's estate, but the guardian may bring
24 an action on behalf of the ward to compel the trustee to
25 exercise the trustee's discretion or to seek relief from an
26 abuse of discretion. This paragraph shall not limit the right

1 of a guardian of the estate to receive accountings from the
2 trustee on behalf of the ward.

3 (d-5) Upon a verified petition by the plenary or limited
4 guardian of the estate or the request of the ward that is
5 accompanied by a current physician's or a licensed clinical
6 psychologist's report that states the ward possesses
7 testamentary capacity, the court may enter an order
8 authorizing the ward to execute a will or codicil. In so
9 ordering, the court shall authorize the guardian to retain
10 independent counsel for the ward with whom the ward may
11 execute or modify a will or codicil.

12 (e) Absent court order pursuant to the Illinois Power of
13 Attorney Act directing a guardian to exercise powers of the
14 principal under an agency that survives disability, the
15 guardian will have no power, duty or liability with respect to
16 any property subject to the agency. This subsection (e)
17 applies to all agencies, whenever and wherever executed.

18 (f) Upon petition by any interested person (including the
19 standby or short-term guardian), with such notice to
20 interested persons as the court directs and a finding by the
21 court that it is in the best interest of the person with a
22 disability, the court may terminate or limit the authority of
23 a standby or short-term guardian or may enter such other
24 orders as the court deems necessary to provide for the best
25 interest of the person with a disability. The petition for
26 termination or limitation of the authority of a standby or

1 short-term guardian may, but need not, be combined with a
2 petition to have another guardian appointed for the person
3 with a disability.

4 (Source: P.A. 101-329, eff. 8-9-19.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.