



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB0913

Introduced 2/7/2007, by Rep. Barbara Flynn Currie

#### SYNOPSIS AS INTRODUCED:

105 ILCS 5/10-20.12b  
755 ILCS 5/11-5.4  
755 ILCS 5/11-13.2

Amends the School Code. Provides that the residence of a person who has legal custody of a pupil is deemed to be the pupil's residence when the person exercises custody under a short-term guardianship, provided that a court order is entered that establishes the person as the pupil's permanent guardian within 365 days (at present, 60 days) of the pupil's enrollment in the school district. Amends the Probate Act of 1975. Provides that a person may be appointed as and exercise the duties of a short-term guardian for a minor for up to 365 days (at present, 60 days).

LRB095 05123 AJO 25193 b

1 AN ACT concerning guardianship.

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

4 Section 5. The School Code is amended by changing Section  
5 10-20.12b as follows:

6 (105 ILCS 5/10-20.12b)

7 Sec. 10-20.12b. Residency; payment of tuition; hearing;  
8 criminal penalty.

9 (a) For purposes of this Section:

10 (1) The residence of a person who has legal custody of  
11 a pupil is deemed to be the residence of the pupil.

12 (2) "Legal custody" means one of the following:

13 (i) Custody exercised by a natural or adoptive  
14 parent with whom the pupil resides.

15 (ii) Custody granted by order of a court of  
16 competent jurisdiction to a person with whom the pupil  
17 resides for reasons other than to have access to the  
18 educational programs of the district.

19 (iii) Custody exercised under a statutory  
20 short-term guardianship, provided that within 365 ~~60~~  
21 days of the pupil's enrollment a court order is entered  
22 that establishes a permanent guardianship and grants  
23 custody to a person with whom the pupil resides for

1 reasons other than to have access to the educational  
2 programs of the district.

3 (iv) Custody exercised by an adult caretaker  
4 relative who is receiving aid under the Illinois Public  
5 Aid Code for the pupil who resides with that adult  
6 caretaker relative for purposes other than to have  
7 access to the educational programs of the district.

8 (v) Custody exercised by an adult who demonstrates  
9 that, in fact, he or she has assumed and exercises  
10 legal responsibility for the pupil and provides the  
11 pupil with a regular fixed night-time abode for  
12 purposes other than to have access to the educational  
13 programs of the district.

14 (a-5) If a pupil's change of residence is due to the  
15 military service obligation of a person who has legal custody  
16 of the pupil, then, upon the written request of the person  
17 having legal custody of the pupil, the residence of the pupil  
18 is deemed for all purposes relating to enrollment (including  
19 tuition, fees, and costs), for the duration of the custodian's  
20 military service obligation, to be the same as the residence of  
21 the pupil immediately before the change of residence caused by  
22 the military service obligation. A school district is not  
23 responsible for providing transportation to or from school for  
24 a pupil whose residence is determined under this subsection  
25 (a-5). School districts shall facilitate re-enrollment when  
26 necessary to comply with this subsection (a-5).

1           (b) Except as otherwise provided under Section 10-22.5a,  
2 only resident pupils of a school district may attend the  
3 schools of the district without payment of the tuition required  
4 to be charged under Section 10-20.12a. However, children for  
5 whom the Guardianship Administrator of the Department of  
6 Children and Family Services has been appointed temporary  
7 custodian or guardian of the person of a child shall not be  
8 charged tuition as a nonresident pupil if the child was placed  
9 by the Department of Children and Family Services with a foster  
10 parent or placed in another type of child care facility and the  
11 foster parent or child care facility is located in a school  
12 district other than the child's former school district and it  
13 is determined by the Department of Children and Family Services  
14 to be in the child's best interest to maintain attendance at  
15 his or her former school district.

16           (c) The provisions of this subsection do not apply in  
17 school districts having a population of 500,000 or more. If a  
18 school board in a school district with a population of less  
19 than 500,000 determines that a pupil who is attending school in  
20 the district on a tuition free basis is a nonresident of the  
21 district for whom tuition is required to be charged under  
22 Section 10-20.12a, the board shall notify the person who  
23 enrolled the pupil of the amount of the tuition charged under  
24 Section 10-20.12a that is due to the district for the  
25 nonresident pupil's attendance in the district's schools. The  
26 notice shall be given by certified mail, return receipt

1 requested. Within 10 days after receipt of the notice, the  
2 person who enrolled the pupil may request a hearing to review  
3 the determination of the school board. The request shall be  
4 sent by certified mail, return receipt requested, to the  
5 district superintendent. Within 10 days after receipt of the  
6 request, the board shall notify, by certified mail, return  
7 receipt requested, the person requesting the hearing of the  
8 time and place of the hearing, which shall be held not less  
9 than 10 nor more than 20 days after the notice of hearing is  
10 given. The board or a hearing officer designated by the board  
11 shall conduct the hearing. The board and the person who  
12 enrolled the pupil may be represented at the hearing by  
13 representatives of their choice. At the hearing, the person who  
14 enrolled the pupil shall have the burden of going forward with  
15 the evidence concerning the pupil's residency. If the hearing  
16 is conducted by a hearing officer, the hearing officer, within  
17 5 days after the conclusion of the hearing, shall send a  
18 written report of his or her findings by certified mail, return  
19 receipt requested, to the school board and to the person who  
20 enrolled the pupil. The person who enrolled the pupil may,  
21 within 5 days after receiving the findings, file written  
22 objections to the findings with the school board by sending the  
23 objections by certified mail, return receipt requested,  
24 addressed to the district superintendent. Whether the hearing  
25 is conducted by the school board or a hearing officer, the  
26 school board shall, within 15 days after the conclusion of the

1 hearing, decide whether or not the pupil is a resident of the  
2 district and the amount of any tuition required to be charged  
3 under Section 10-20.12a as a result of the pupil's attendance  
4 in the schools of the district. The school board shall send a  
5 copy of its decision to the person who enrolled the pupil, and  
6 the decision of the school board shall be final.

7 (c-5) The provisions of this subsection apply only in  
8 school districts having a population of 500,000 or more. If the  
9 board of education of a school district with a population of  
10 500,000 or more determines that a pupil who is attending school  
11 in the district on a tuition free basis is a nonresident of the  
12 district for whom tuition is required to be charged under  
13 Section 10-20.12a, the board shall notify the person who  
14 enrolled the pupil of the amount of the tuition charged under  
15 Section 10-20.12a that is due to the district for the  
16 nonresident pupil's attendance in the district's schools. The  
17 notice shall be given by certified mail, return receipt  
18 requested. Within 10 days after receipt of the notice, the  
19 person who enrolled the pupil may request a hearing to review  
20 the determination of the school board. The request shall be  
21 sent by certified mail, return receipt requested, to the  
22 district superintendent. Within 30 days after receipt of the  
23 request, the board shall notify, by certified mail, return  
24 receipt requested, the person requesting the hearing of the  
25 time and place of the hearing, which shall be held not less  
26 than 10 nor more than 30 days after the notice of hearing is

1 given. The board or a hearing officer designated by the board  
2 shall conduct the hearing. The board and the person who  
3 enrolled the pupil may each be represented at the hearing by a  
4 representative of their choice. At the hearing, the person who  
5 enrolled the pupil shall have the burden of going forward with  
6 the evidence concerning the pupil's residency. If the hearing  
7 is conducted by a hearing officer, the hearing officer, within  
8 20 days after the conclusion of the hearing, shall serve a  
9 written report of his or her findings by personal service or by  
10 certified mail, return receipt requested, to the school board  
11 and to the person who enrolled the pupil. The person who  
12 enrolled the pupil may, within 10 days after receiving the  
13 findings, file written objections to the findings with the  
14 board of education by sending the objections by certified mail,  
15 return receipt requested, addressed to the general  
16 superintendent of schools. If the hearing is conducted by the  
17 board of education, the board shall, within 45 days after the  
18 conclusion of the hearing, decide whether or not the pupil is a  
19 resident of the district and the amount of any tuition required  
20 to be charged under Section 10-20.12a as a result of the  
21 pupil's attendance in the schools of the district. If the  
22 hearing is conducted by a hearing officer, the board of  
23 education shall, within 45 days after the receipt of the  
24 hearing officer's findings, decide whether or not the pupil is  
25 a resident of the district and the amount of any tuition  
26 required to be charged under Section 10-20.12a as a result of

1 the pupil's attendance in the schools of the district. The  
2 board of education shall send, by certified mail, return  
3 receipt requested, a copy of its decision to the person who  
4 enrolled the pupil, and the decision of the board shall be  
5 final.

6 (d) If a hearing is requested under subsection (c) or (c-5)  
7 to review the determination of the school board or board of  
8 education that a nonresident pupil is attending the schools of  
9 the district without payment of the tuition required to be  
10 charged under Section 10-20.12a, the pupil may, at the request  
11 of a person who enrolled the pupil, continue attendance at the  
12 schools of the district pending a final decision of the board  
13 following the hearing. However, attendance of that pupil in the  
14 schools of the district as authorized by this subsection (d)  
15 shall not relieve any person who enrolled the pupil of the  
16 obligation to pay the tuition charged for that attendance under  
17 Section 10-20.12a if the final decision of the board is that  
18 the pupil is a nonresident of the district. If a pupil is  
19 determined to be a nonresident of the district for whom tuition  
20 is required to be charged pursuant to this Section, the board  
21 shall refuse to permit the pupil to continue attending the  
22 schools of the district unless the required tuition is paid for  
23 the pupil.

24 (e) Except for a pupil referred to in subsection (b) of  
25 Section 10-22.5a, a pupil referred to in Section 10-20.12a, or  
26 a pupil referred to in subsection (b) of this Section, a person



1 who knowingly enrolls or attempts to enroll in the schools of a  
2 school district on a tuition free basis a pupil known by that  
3 person to be a nonresident of the district shall be guilty of a  
4 Class C misdemeanor.

5 (f) A person who knowingly or wilfully presents to any  
6 school district any false information regarding the residency  
7 of a pupil for the purpose of enabling that pupil to attend any  
8 school in that district without the payment of a nonresident  
9 tuition charge shall be guilty of a Class C misdemeanor.

10 (g) The provisions of this Section are subject to the  
11 provisions of the Education for Homeless Children Act. Nothing  
12 in this Section shall be construed to apply to or require the  
13 payment of tuition by a parent or guardian of a "homeless  
14 child" (as that term is defined in Section 1-5 of the Education  
15 for Homeless Children Act) in connection with or as a result of  
16 the homeless child's continued education or enrollment in a  
17 school that is chosen in accordance with any of the options  
18 provided in Section 1-10 of that Act.

19 (Source: P.A. 94-309, eff. 7-25-05.)

20 Section 10. The Probate Act of 1975 is amended by changing  
21 Sections 11-5.4 and 11-13.2 as follows:

22 (755 ILCS 5/11-5.4)

23 Sec. 11-5.4. Short-term guardian.

24 (a) A parent, adoptive parent, or adjudicated parent whose

1 parental rights have not been terminated, or the guardian of  
2 the person of a minor may appoint in writing, without court  
3 approval, a short-term guardian of an unmarried minor or a  
4 child likely to be born. The written instrument appointing a  
5 short-term guardian shall be dated and shall identify the  
6 appointing parent or guardian, the minor, and the person  
7 appointed to be the short-term guardian. The written instrument  
8 shall be signed by, or at the direction of, the appointing  
9 parent in the presence of at least 2 credible witnesses at  
10 least 18 years of age, neither of whom is the person appointed  
11 as the short-term guardian. The person appointed as the  
12 short-term guardian shall also sign the written instrument, but  
13 need not sign at the same time as the appointing parent.

14 (b) A parent or guardian shall not appoint a short-term  
15 guardian of a minor if the minor has another living parent,  
16 adoptive parent or adjudicated parent, whose parental rights  
17 have not been terminated, whose whereabouts are known, and who  
18 is willing and able to make and carry out day-to-day child care  
19 decisions concerning the minor, unless the nonappointing  
20 parent consents to the appointment by signing the written  
21 instrument of appointment.

22 (c) The appointment of the short-term guardian is effective  
23 immediately upon the date the written instrument is executed,  
24 unless the written instrument provides for the appointment to  
25 become effective upon a later specified date or event. The  
26 short-term guardian shall have authority to act as guardian of

1 the minor as provided in Section 11-13.2 for a period of 365 ~~60~~  
2 days from the date the appointment is effective, unless the  
3 written instrument provides for the appointment to terminate  
4 upon an earlier specified date or event. Only one written  
5 instrument appointing a short-term guardian may be in force at  
6 any given time.

7 (d) Every appointment of a short-term guardian may be  
8 amended or revoked by the appointing parent or by the  
9 appointing guardian of the person of the minor at any time and  
10 in any manner communicated to the short-term guardian or to any  
11 other person. Any person other than the short-term guardian to  
12 whom a revocation or amendment is communicated or delivered  
13 shall make all reasonable efforts to inform the short-term  
14 guardian of that fact as promptly as possible.

15 (e) The appointment of a short-term guardian or successor  
16 short-term guardian does not affect the rights of the other  
17 parent in the minor.

18 (f) The written instrument appointing a short-term  
19 guardian may, but need not, be in the following form:

20 APPOINTMENT OF SHORT-TERM GUARDIAN

21 [ IT IS IMPORTANT TO READ THE FOLLOWING INSTRUCTIONS:

22 By properly completing this form, a parent or the guardian  
23 of the person of the child is appointing a guardian of a child  
24 of the parent (or a minor ward of the guardian, as the case may

1 be) for a period of up to 365 ~~60~~ days. A separate form should be  
2 completed for each child. The person appointed as the guardian  
3 must sign the form, but need not do so at the same time as the  
4 parent or parents or guardian.

5 This form may not be used to appoint a guardian if there is  
6 a guardian already appointed for the child, except that if a  
7 guardian of the person of the child has been appointed, that  
8 guardian may use this form to appoint a short-term guardian.  
9 Both living parents of a child may together appoint a guardian  
10 of the child, or the guardian of the person of the child may  
11 appoint a guardian of the child, for a period of up to 365 ~~60~~  
12 days through the use of this form. If the short-term guardian  
13 is appointed by both living parents of the child, the parents  
14 need not sign the form at the same time.]

15 1. Parent (or guardian) and Child. I, (insert name of  
16 appointing parent or guardian), currently residing at  
17 (insert address of appointing parent or guardian), am a  
18 parent (or the guardian of the person) of the following  
19 child (or of a child likely to be born): (insert name and  
20 date of birth of child, or insert the words "not yet born"  
21 to appoint a short-term guardian for a child likely to be  
22 born and the child's expected date of birth).

23 2. Guardian. I hereby appoint the following person as  
24 the short-term guardian for the child: (insert name and  
25 address of appointed person).

26 3. Effective date. This appointment becomes effective:

1 (check one if you wish it to be applicable)

2 ( ) On the date that I state in writing that I am  
3 no longer either willing or able to make and carry out  
4 day-to-day child care decisions concerning the child.

5 ( ) On the date that a physician familiar with my  
6 condition certifies in writing that I am no longer  
7 willing or able to make and carry out day-to-day child  
8 care decisions concerning the child.

9 ( ) On the date that I am admitted as an in-patient  
10 to a hospital or other health care institution.

11 ( ) On the following date: (insert date).

12 ( ) Other: (insert other).

13 [NOTE: If this item is not completed, the appointment is  
14 effective immediately upon the date the form is signed and  
15 dated below.]

16 4. Termination. This appointment shall terminate 365  
17 ~~60~~ days after the effective date, unless it terminates  
18 sooner as determined by the event or date I have indicated  
19 below: (check one if you wish it to be applicable)

20 ( ) On the date that I state in writing that I am  
21 willing and able to make and carry out day-to-day child  
22 care decisions concerning the child.

23 ( ) On the date that a physician familiar with my  
24 condition certifies in writing that I am willing and  
25 able to make and carry out day-to-day child care  
26 decisions concerning the child.

1           ( ) On the date that I am discharged from the  
2           hospital or other health care institution where I was  
3           admitted as an in-patient, which established the  
4           effective date.

5           ( ) On the date which is (state a number of days,  
6           but no more than 365 ~~60~~ days) days after the effective  
7           date.

8           ( ) Other: (insert other).

9           [NOTE: If this item is not completed, the appointment will be  
10           effective for a period of 365 ~~60~~ days, beginning on the  
11           effective date.]

12           5. Date and signature of appointing parent or guardian.

13           This appointment is made this (insert day) day of (insert  
14           month and year).

15           Signed: (appointing parent)

16           6. Witnesses. I saw the parent (or the guardian of the  
17           person of the child) sign this instrument or I saw the  
18           parent (or the guardian of the person of the child) direct  
19           someone to sign this instrument for the parent (or the  
20           guardian). Then I signed this instrument as a witness in  
21           the presence of the parent (or the guardian). I am not  
22           appointed in this instrument to act as the short-term  
23           guardian for the child. (Insert space for names, addresses,  
24           and signatures of 2 witnesses)

25           7. Acceptance of short-term guardian. I accept this  
26           appointment as short-term guardian on this (insert day) day

1 of (insert month and year).

2 Signed: (short-term guardian)

3 8. Consent of child's other parent. I, (insert name of  
4 the child's other living parent), currently residing at  
5 (insert address of child's other living parent), hereby  
6 consent to this appointment on this (insert day) day of  
7 (insert month and year).

8 Signed: (consenting parent)

9 [NOTE: The signature of a consenting parent is not necessary if  
10 one of the following applies: (i) the child's other parent has  
11 died; or (ii) the whereabouts of the child's other parent are  
12 not known; or (iii) the child's other parent is not willing or  
13 able to make and carry out day-to-day child care decisions  
14 concerning the child; or (iv) the child's parents were never  
15 married and no court has issued an order establishing  
16 parentage.]

17 (Source: P.A. 90-796, eff. 12-15-98.)

18 (755 ILCS 5/11-13.2)

19 Sec. 11-13.2. Duties of short-term guardian of a minor.

20 (a) Immediately upon the effective date of the appointment  
21 of a short-term guardian, the short-term guardian shall assume  
22 all duties as short-term guardian of the minor as provided in  
23 this Section. The short-term guardian of the person shall have  
24 authority to act as short-term guardian, without direction of  
25 court, for the duration of the appointment, which in no case

1 shall exceed a period of 365 ~~60~~ days. The authority of the  
2 short-term guardian may be limited or terminated by a court of  
3 competent jurisdiction.

4 (b) Unless further specifically limited by the instrument  
5 appointing the short-term guardian, a short-term guardian  
6 shall have the authority to act as a guardian of the person of  
7 a minor as prescribed in Section 11-13, but shall not have any  
8 authority to act as guardian of the estate of a minor, except  
9 that a short-term guardian shall have the authority to apply  
10 for and receive on behalf of the minor benefits to which the  
11 child may be entitled from or under federal, State, or local  
12 organizations or programs.

13 (Source: P.A. 88-529.)