



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB2290

Introduced 2/18/2009, by Rep. Kathleen A. Ryg

#### SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-17.1 new

Amends the Probate Act of 1975. Provides that a guardian shall not consent to a ward's sterilization without a court order, but a court order is not required if a procedure is medically necessary to preserve the ward's life or prevent a serious impairment even though it may result in sterilization. Provides that if the motion of a guardian seeking to consent to a ward's sterilization shows that sterilization is warranted, the court shall appoint a guardian ad litem, who shall be an attorney or a qualified disabilities or mental illness advocate. Provides that the court may appoint counsel for the ward, and shall do so upon the ward's request, if the ward objects to sterilization, or the ward's position is adverse to the guardian ad litem. Provides that the court shall advise the ward of his or her right to appointed counsel. Provides for a medical and psychological evaluation to assess the ward's capacity concerning sterilization. Provides that the court shall determine if the ward has the capacity to consent to sterilization by considering whether the ward is able to understand the relationship between sexual activity and reproduction; reproduction consequences; and sterilization. Provides that the ward shall not be deemed to lack capacity solely on the basis of a disability. Provides that if the court finds that the ward has capacity to consent, and the ward objects or consents, the court shall enter an order based on the ward's decision. If the court finds that the ward does not have capacity and has no clear desire for sterilization, the court shall apply standards. Provides that those standards include that the court shall not authorize sterilization unless the court clearly finds that the ward lacks decisional capacity, is fertile, and capable of procreation; the benefits outweigh the harm; less intrusive alternatives were considered; and sterilization is in the ward's best interest, considering trauma or psychological damage if he or she had a child. Provides that the court shall consider if the ward is sexually active, the ability of the ward to understand reproduction and contraception, and other factors relative to the ward's best interest. Includes other provisions.

LRB096 07455 AJO 17547 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 adding  
5 Section 11a-17.1 as follows:

6 (755 ILCS 5/11a-17.1 new)

7 Sec. 11a-17.1. Sterilization of ward.

8 (a) A guardian of the person shall not consent to the  
9 sterilization of the ward without first obtaining an order from  
10 the court granting the guardian the authority to provide  
11 consent. For purposes of this Article XIa, "sterilization"  
12 means any procedure that has as its purpose rendering the ward  
13 permanently incapable of reproduction; provided, however, that  
14 an order from the court is not required for a procedure that is  
15 medically necessary to preserve the life of the ward or to  
16 prevent serious impairment to the health of the ward and which  
17 may result in sterilization.

18 (b) A guardian seeking authority to consent to the  
19 sterilization of the ward shall seek such authority by filing a  
20 verified motion. The verified motion shall allege facts which  
21 demonstrate that the proposed sterilization is warranted under  
22 subsection (f), (g) or (h) of this Section. The guardian ad  
23 litem will notify the ward of the motion in the manner set

1 forth in subsection (c) of this Section.

2 (c) Upon the filing of a verified motion for authority to  
3 consent to sterilization, the court shall appoint a guardian ad  
4 litem to report to the court consistent with the provisions of  
5 this Section. If the guardian ad litem is not a licensed  
6 attorney, he or she shall be qualified, by training or  
7 experience, to work with or advocate for persons with a  
8 developmental disability, mental illness, physical disability,  
9 or disability because of mental deterioration, depending on the  
10 type of disability of the ward that is alleged in the motion.  
11 The court may allow the guardian ad litem reasonable  
12 compensation. The guardian ad litem may consult with a person  
13 who by training or experience is qualified to work with persons  
14 with a developmental disability, mental illness, physical  
15 disability, or disability because of mental deterioration,  
16 depending on the type of disability of the ward that is  
17 alleged. The guardian ad litem may also consult with health  
18 care providers knowledgeable about reproductive health matters  
19 including sterilization, other forms of contraception, and  
20 childbirth. Outside the presence of the guardian, the guardian  
21 ad litem shall personally observe the ward prior to the hearing  
22 and shall inform the ward orally and in writing of the contents  
23 of the verified motion for authority to consent to  
24 sterilization. Outside the presence of the guardian, the  
25 guardian ad litem shall also attempt to elicit the ward's  
26 position concerning the motion, and any other areas of inquiry

1 deemed appropriate by the court. At or before the hearing, the  
2 guardian ad litem shall file a written report detailing his or  
3 her observations of the ward; the responses of the ward to any  
4 of the inquiries detailed in this Section; the opinion of the  
5 guardian ad litem and any other professionals with whom the  
6 guardian ad litem consulted concerning the ward's  
7 understanding of and desire for or objection to, as well as  
8 what is in the ward's best interest relative to, sterilization,  
9 other forms of contraception, and childbirth; and any other  
10 material issue discovered by the guardian ad litem. The  
11 guardian ad litem shall appear at the hearing and testify, and  
12 may present witnesses, as to any issues presented in his or her  
13 report.

14 (d) The court (1) may appoint counsel for the ward if the  
15 court finds that the interests of the ward will be best served  
16 by the appointment, and (2) shall appoint counsel upon the  
17 ward's request, if the ward is objecting to the proposed  
18 sterilization, or if the ward takes a position adverse to that  
19 of the guardian ad litem. The ward shall be permitted to obtain  
20 the appointment of counsel either at the hearing or by any  
21 written or oral request communicated to the court prior to the  
22 hearing. The court shall inform the ward of this right to  
23 obtain appointed counsel. The court may allow counsel for the  
24 ward reasonable compensation.

25 (e) The court shall order a medical and psychological  
26 evaluation of the ward. The evaluation shall address the ward's

1 decision making capacity with respect to the proposed  
2 sterilization, the existence of any less permanent  
3 alternatives, and any other material issue.

4 (f) The court shall determine, as a threshold inquiry,  
5 whether the ward has capacity to consent or withhold consent to  
6 the proposed sterilization and, if the ward lacks such  
7 capacity, whether the ward is likely to regain such capacity.  
8 The ward shall not be deemed to lack such capacity solely on  
9 the basis of the adjudication of disability and appointment of  
10 a guardian. In determining capacity, the court shall consider  
11 whether the ward is able, after being provided appropriate  
12 information, to understand the relationship between sexual  
13 activity and reproduction; the consequences of reproduction;  
14 and the nature and consequences of the proposed sterilization  
15 procedure. If the court finds that (1) the ward has capacity to  
16 consent or withhold consent to the proposed sterilization, and  
17 (2) the ward objects or consents to the procedure, the court  
18 shall enter an order consistent with the ward's objection or  
19 consent and the proceedings on the verified motion shall be  
20 terminated.

21 (g) If the court finds that the ward does not have capacity  
22 to consent or withhold consent to the proposed sterilization  
23 and is unlikely to regain such capacity, the court shall  
24 determine whether the ward is expressing a clear desire for the  
25 proposed sterilization. If the ward is expressing a clear  
26 desire for the proposed sterilization, the court's decision

1 regarding the proposed sterilization shall be made in  
2 accordance with the standards set forth in subsection (e) of  
3 Section 11a-17 of this Act.

4 (h) If the court finds that the ward does not have capacity  
5 to consent or withhold consent to the proposed sterilization  
6 and is unlikely to regain such capacity, and that the ward is  
7 not expressing a clear desire for the proposed sterilization,  
8 the court shall consider the standards set forth in subsection  
9 (e) of Section 11a-17 of this Act and enter written findings of  
10 fact and conclusions of law addressing those standards. In  
11 addition, the court shall not authorize the guardian to consent  
12 to the proposed sterilization unless the court finds, by clear  
13 and convincing evidence and based on written findings of fact  
14 and conclusions of law, that all of the following factors are  
15 present:

16 (1) The ward lacks decisional capacity regarding the  
17 proposed sterilization.

18 (2) The ward is fertile and capable of procreation.

19 (3) The benefits to the ward of the proposed  
20 sterilization outweigh the harm.

21 (4) The court has considered less intrusive  
22 alternatives and found them to be inadequate in this case.

23 (5) The proposed sterilization is in the best interest  
24 of the ward. In considering the ward's best interest, the  
25 court shall consider the following factors:

26 (A) The possibility that the ward will experience

1           trauma or psychological damage if he or she has a child  
2           and, conversely, the possibility of trauma or  
3           psychological damage from the proposed sterilization.

4           (B) The ward is or is likely to become sexually  
5           active.

6           (C) The inability of the ward to understand  
7           reproduction or contraception and the likely  
8           permanence of that inability.

9           (D) Any other factors that assist the court in  
10          determining the best interest of the ward relative to  
11          the proposed sterilization.