

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.