



Rep. Sara Feigenholtz

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1 AMENDMENT TO HOUSE BILL 4985

2 AMENDMENT NO. _____. Amend House Bill 4985 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Guardianship and Advocacy Act is amended by
5 changing Section 31 as follows:

6 (20 ILCS 3955/31) (from Ch. 91 1/2, par. 731)

7 Sec. 31. Appointment; availability of State Guardian;
8 available private guardian. The State Guardian shall not be
9 appointed if another suitable person is available and willing
10 to accept the guardianship appointment. In all cases where a
11 court appoints the State Guardian, the court shall indicate in
12 the order appointing the guardian as a finding of fact that no
13 other suitable and willing person could be found to accept the
14 guardianship appointment. On and after the effective date of
15 this amendatory Act of the 97th General Assembly, the court
16 shall also indicate in the order, as a finding of fact, the

1 reasons that the State Guardian appointment, rather than the
2 appointment of another interested party, is required. This
3 requirement shall be waived where the Office of State Guardian
4 petitions for its own appointment as guardian.

5 (Source: P.A. 89-396, eff. 8-20-95.)

6 Section 10. The Clerks of Courts Act is amended by adding
7 Section 27.3f as follows:

8 (705 ILCS 105/27.3f new)

9 Sec. 27.3f. Guardianship and advocacy operations fee.

10 (a) As used in this Section, "guardianship and advocacy"
11 means the guardianship and advocacy services provided by the
12 Guardianship and Advocacy Commission and defined in the
13 Guardianship and Advocacy Act. Viable public guardianship and
14 advocacy programs, including the public guardianship programs
15 created and supervised in probate proceedings in the Illinois
16 courts, are essential to the administration of justice and
17 ensure that incapacitated persons and their estates are
18 protected. To defray the expense of maintaining and operating
19 the divisions and programs of the Guardianship and Advocacy
20 Commission and to support viable guardianship and advocacy
21 programs throughout Illinois, each circuit court clerk shall
22 charge and collect a fee on all matters filed in probate cases
23 in accordance with this Section, but no fees shall be assessed
24 against the State Guardian, any State agency under the

1 jurisdiction of the Governor, any public guardian, or any
2 State's Attorney.

3 (b) No fees specified in this Section shall be imposed in
4 any minor guardianship established under Article XI of the
5 Probate Act of 1975, or against an indigent person. An indigent
6 person shall include any person who meets one or more of the
7 following criteria:

8 (1) He or she is receiving assistance under one or more
9 of the following public benefits programs: Supplemental
10 Security Income (SSI), Aid to the Aged, Blind, and Disabled
11 (AABD), Temporary Assistance for Needy Families (TANF),
12 Supplemental Nutrition Assistance Program (SNAP) (formerly
13 Food Stamps), General Assistance, State Transitional
14 Assistance, or State Children and Family Assistance.

15 (2) His or her available income is 125% or less of the
16 current poverty level as established by the United States
17 Department of Health and Human Services, unless the
18 applicant's assets that are not exempt under Part 9 or 10
19 of Article XII of the Code of Civil Procedure are of a
20 nature and value that the court determines that the
21 applicant is able to pay the fees, costs, and charges.

22 (3) He or she is, in the discretion of the court,
23 unable to proceed in an action without payment of fees,
24 costs, and charges and whose payment of those fees, costs,
25 and charges would result in substantial hardship to the
26 person or his or her family.

1 (4) He or she is an indigent person pursuant to Section
2 5-105.5 of the Code of Civil Procedure, providing that an
3 "indigent person" means a person whose income is 125% or
4 less of the current official federal poverty guidelines or
5 who is otherwise eligible to receive civil legal services
6 under the Legal Services Corporation Act of 1974.

7 (c) The clerk is entitled to receive the fees specified in
8 this Section, which shall be paid in advance, and managed by
9 the clerk as set out in paragraph (4), except that, for good
10 cause shown, the court may suspend, reduce, or release the
11 costs payable under this Section:

12 (1) For administration of the estate of a decedent
13 (whether testate or intestate) or of a missing person, a
14 fee of \$50, plus the fees specified in paragraph (3),
15 except:

16 (A) When the value of the real and personal
17 property of a decedent (whether testate or intestate)
18 does not exceed \$15,000, no fee shall be assessed.

19 (B) When (i) proof of heirship alone is made, (ii)
20 a domestic or foreign will is admitted to probate
21 without administration (including proof of heirship),
22 or (iii) letters of office are issued for a particular
23 purpose without administration of the estate, the fee
24 shall be \$40.

25 (2) For administration of the estate of a ward that
26 results in the appointment of the Office of State Guardian,

1 the fee shall be \$250, plus the fees specified in paragraph
2 (3).

3 (3) In addition to the fees payable under paragraph (1)
4 or (2) of this subsection (c), the following fees are
5 payable:

6 (A) For each account (other than one final account)
7 filed in the estate of a decedent, or ward, the fee
8 shall be \$25.

9 (B) For filing a claim in an estate when the amount
10 claimed is \$150 or more but less than \$500, the fee
11 shall be \$100; when the amount claimed is \$500 or more
12 but less than \$10,000, the fee shall be \$115; when the
13 amount claimed is \$10,000 or more, the fee shall be
14 \$135; provided that the court in allowing a claim may
15 add to the amount allowed the filing fee paid by the
16 claimant.

17 (C) For filing in an estate a claim, petition, or
18 supplemental proceeding based upon an action seeking
19 equitable relief including the construction or contest
20 of a will, enforcement of a contract to make a will,
21 and proceedings involving a testamentary trust or the
22 appointment of a testamentary trustee, the fee shall be
23 \$60.

24 (D) For filing in an estate (i) the appearance of
25 any person for the purpose of consent or (ii) the
26 appearance of an executor, administrator,

1 administrator to collect, guardian, guardian ad litem,
2 or special administrator, no fee.

3 (E) Except as provided in subparagraph (D) of this
4 paragraph (3), for filing the appearance of any person
5 or persons, the fee shall be \$30.

6 (F) For each jury demand, the fee shall be \$180.

7 (G) For disposition of the collection of a judgment
8 or settlement of an action or claim for wrongful death
9 of a decedent or of any cause of action of a ward, when
10 there is no other administration of the estate, the fee
11 shall be \$50, less any amount paid under subparagraph
12 (B) of paragraph (1) or subparagraph (B) of this
13 paragraph (3), except that if the amount involved does
14 not exceed \$5,000, the fee, including any amount paid
15 under subparagraph (B) of paragraph (1) or
16 subparagraph (B) of this paragraph (3), shall be \$20.

17 (4) The guardianship and advocacy operations fees, as
18 outlined in this Section, shall be in addition to all other
19 fees and charges and assessable as costs and shall not be
20 subject to disbursement under Section 27.5 or 27.6 of this
21 Act. Twenty percent of the fee shall be retained by the
22 clerk to defray costs of collection and 80% of the fee
23 shall be disbursed within 60 days after receipt by the
24 circuit clerk to the State Treasurer for deposit by the
25 State Treasurer into the Guardianship and Advocacy Fund.

1 Section 15. The Probate Act of 1975 is amended by changing
2 Sections 11a-3, 11a-12, 11a-20, and 13-1 and by adding Section
3 13-1.3 as follows:

4 (755 ILCS 5/11a-3) (from Ch. 110 1/2, par. 11a-3)

5 Sec. 11a-3. Adjudication of disability; Power to appoint
6 guardian.

7 (a) Upon the filing of a petition by a reputable person or
8 by the alleged disabled person himself or on its own motion,
9 the court may adjudge a person to be a disabled person, but
10 only if it has been demonstrated by clear and convincing
11 evidence that the person is a disabled person as defined in
12 Section 11a-2. If the court adjudges a person to be a disabled
13 person, the court may appoint (1) a guardian of his person, if
14 it has been demonstrated by clear and convincing evidence that
15 because of his disability he lacks sufficient understanding or
16 capacity to make or communicate responsible decisions
17 concerning the care of his person, or (2) a guardian of his
18 estate, if it has been demonstrated by clear and convincing
19 evidence that because of his disability he is unable to manage
20 his estate or financial affairs, or (3) a guardian of his
21 person and of his estate.

22 (b) Guardianship shall be utilized only as is necessary to
23 promote the well-being of the disabled person, to protect him
24 from neglect, exploitation, or abuse, and to encourage
25 development of his maximum self-reliance and independence.

1 Guardianship shall be implemented in the least restrictive
2 alternative, shall maximize the alleged disabled person's
3 right to self-determination and autonomy, and Guardianship
4 shall be ordered only to the extent necessitated by the
5 individual's actual mental, physical and adaptive limitations.
6 In determining the least restrictive alternative, the court
7 shall consider options that allow the ward to live, learn, and
8 work in a setting that places as few limits as possible on the
9 ward's rights and personal freedom as appropriate to meet the
10 needs of the ward.

11 (Source: P.A. 93-435, eff. 1-1-04.)

12 (755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)

13 Sec. 11a-12. Order of appointment.)

14 (a) If basis for the appointment of a guardian as specified
15 in Section 11a-3 is not found, the court shall dismiss the
16 petition.

17 (b) If the respondent is adjudged to be disabled and to
18 lack some but not all of the ~~be totally without~~ capacity as
19 specified in Section 11a-3, and if the court finds that ~~limited~~
20 guardianship is necessary for the protection of ~~will not~~
21 ~~provide sufficient protection for~~ the disabled person, his or
22 her estate, or both, the court shall appoint a limited ~~plenary~~
23 guardian for the respondent's person or estate or both. The
24 court shall enter a written order stating the factual basis for
25 its findings and specifying the duties and powers of the

1 guardian and the legal disabilities to which the respondent is
2 subject.

3 (c) If the respondent is adjudged to be disabled and to be
4 totally without ~~lack some but not all of the~~ capacity as
5 specified in Section 11a-3, and if the court finds that limited
6 guardianship will not provide sufficient ~~is necessary for the~~
7 protection for ~~of~~ the disabled person, his or her estate, or
8 both, the court shall appoint a plenary guardian for limited
9 ~~guardian of~~ the respondent's person or estate or both. The
10 court shall enter a written order stating the factual basis for
11 its findings ~~and specifying the duties and powers of the~~
12 ~~guardian and the legal disabilities to which the respondent is~~
13 ~~subject.~~

14 (d) The selection of the guardian shall be in the
15 discretion of the court, which shall give due consideration to
16 the preference of the disabled person as to a guardian, as well
17 as the qualifications of the proposed guardian, in making its
18 appointment.

19 (Source: P.A. 89-396, eff. 8-20-95.)

20 (755 ILCS 5/11a-20) (from Ch. 110 1/2, par. 11a-20)

21 Sec. 11a-20. Termination of adjudication of disability -
22 Revocation of letters - modification.) (a) Except as provided
23 in subsection (b-5), upon ~~Upon~~ the filing of a petition by or
24 on behalf of a disabled person or on its own motion, the court
25 may terminate the adjudication of disability of the ward,

1 revoke the letters of guardianship of the estate or person, or
2 both, or modify the duties of the guardian if the ward's
3 capacity to perform the tasks necessary for the care of his
4 person or the management of his estate has been demonstrated by
5 clear and convincing evidence. A report or testimony by a
6 licensed physician is not a prerequisite for termination,
7 revocation or modification of a guardianship order under this
8 subsection (a).

9 (b) Except as provided in subsection (b-5), a request by
10 the ward or any other person on the ward's behalf, under this
11 Section may be communicated to the court or judge by any means,
12 including but not limited to informal letter, telephone call or
13 visit. Upon receipt of a request from the ward or another
14 person, the court may appoint a guardian ad litem to
15 investigate and report to the court concerning the allegations
16 made in conjunction with said request, and if the ward wishes
17 to terminate, revoke, or modify the guardianship order, to
18 prepare the ward's petition and to render such other services
19 as the court directs.

20 (b-5) Upon the filing of a verified petition by the
21 guardian of the disabled person or the disabled person, the
22 court may terminate the adjudication of disability of the ward,
23 revoke the letters of guardianship of the estate or person, or
24 both, or modify the duties of the guardian if: (i) a report
25 completed in accordance with subsection (a) of Section 11a-9
26 states that the disabled person is no longer in need of

1 guardianship or that the type and scope of guardianship should
2 be modified; (ii) the disabled person no longer wishes to be
3 under guardianship or desires that the type and scope of
4 guardianship be modified; and (iii) the guardian of the
5 disabled person states that it is in the best interest of the
6 disabled person to terminate the adjudication of disability of
7 the ward, revoke the letters of guardianship of the estate or
8 person, or both, or modify the duties of the guardian, and
9 provides the basis thereof. In a proceeding brought pursuant to
10 this subsection (b-5), the court may terminate the adjudication
11 of disability of the ward, revoke the letters of guardianship
12 of the estate or person, or both, or modify the duties of the
13 guardian, unless it has been demonstrated by clear and
14 convincing evidence that the ward is incapable of performing
15 the tasks necessary for the care of his or her person or the
16 management of his or her estate.

17 (c) Notice of the hearing on a petition under this Section,
18 together with a copy of the petition, shall be given to the
19 ward, unless he is the petitioner, and to each and every
20 guardian to whom letters of guardianship have been issued and
21 not revoked, not less than 14 days before the hearing.

22 (Source: P.A. 86-605.)

23 (755 ILCS 5/13-1) (from Ch. 110 1/2, par. 13-1)

24 Sec. 13-1. Appointment and term of public administrator and
25 public guardian.) Except as provided in Sections ~~Section~~ 13-1.1

1 and 13-1.3, before the first Monday of December, 1977 and every
2 4 years thereafter, and as often as vacancies occur, the
3 Governor, by and with the advice and consent of the Senate,
4 shall appoint in each county a suitable person to serve as
5 public administrator and a suitable person to serve as public
6 guardian of the county. The Governor may appoint the same
7 person to serve as public guardian and public administrator in
8 one or more counties. In considering the number of counties of
9 service for any prospective public guardian or public
10 administrator the Governor may consider the population of the
11 county and the ability of the prospective public guardian or
12 public administrator to travel to multiple counties and manage
13 estates in multiple counties. Each person so appointed holds
14 his office for 4 years from the first Monday of December, 1977
15 and every 4 years thereafter or until his successor is
16 appointed and qualified.

17 (Source: P.A. 96-752, eff. 1-1-10.)

18 (755 ILCS 5/13-1.3 new)

19 Sec. 13-1.3. Transition to Office of State Guardian. In
20 counties having a population of 1,000,000 or less, and in which
21 there is no currently serving public guardian, the Governor
22 shall, within 90 days after the effective date of this
23 amendatory Act of the 97th General Assembly, appoint the Office
24 of State Guardian the public guardian. In counties having a
25 population of 1,000,000 or less, and in which a public guardian

1 is currently serving but that public guardian's term of office
2 has expired, the Governor shall, no earlier than 9 months and
3 no later than 15 months after the effective date of this
4 amendatory Act of the 97th General Assembly, appoint the Office
5 of State Guardian the public guardian. Subsequently, in
6 counties having a population of 1,000,000 or less and upon the
7 expiration of the public guardian's term, the State Guardian
8 shall be appointed the public guardian. The State Guardian
9 appointed as public guardian shall serve continuously and not
10 be subject to 4-year terms of appointment. In cases in which
11 the State Guardian serves as public guardian, the State
12 Guardian shall assume only the duties described in Sections 30
13 and 32 of the Guardianship and Advocacy Act and shall be
14 otherwise subject to the provisions of the Guardianship and
15 Advocacy Act and not this Article XIII."