



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1612

Introduced 2/13/2013, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

20 ILCS 3955/32	from Ch. 91 1/2, par. 732
755 ILCS 5/11a-12	from Ch. 110 1/2, par. 11a-12
755 ILCS 5/13-1	from Ch. 110 1/2, par. 13-1
755 ILCS 5/13-1.3 new	
755 ILCS 5/13-5	from Ch. 110 1/2, par. 13-5

Amends the Guardianship and Advocacy Act. Provides that the State Guardian shall not be appointed as guardian for a person whose primary diagnosis is mental illness. Provides that each ward of the State Guardian who was adjudicated disabled before the effective date of the amendatory Act and has a primary diagnosis of mental illness shall be the subject of a review hearing and shall be considered eligible for restoration of rights unless evidence demonstrates, by a clear and convincing standard, that guardianship is still required for the ward and that the State Guardian is the only available and suitable guardian. Amends the Probate Act of 1975. Provides that an order appointing a guardian shall implement the least restrictive alternative, maximize the disabled person's autonomy, and exercise authority over the disabled person only as necessary. Provides that in counties having a population of 1,000,000 or less, in which there is no currently serving public guardian or in which there is a public guardian serving under an expired term of office, the Governor shall, within 90 days after the effective date of the amendatory Act, appoint the Office of State guardian as the public guardian. Provides that in counties having a population of 1,000,000 or less and upon the expiration of the public guardian's term, the State guardian shall be appointed the public guardian.

LRB098 10025 HEP 40184 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning guardians.

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

4 Section 5. The Guardianship and Advocacy Act is amended by
5 changing Section 32 as follows:

6 (20 ILCS 3955/32) (from Ch. 91 1/2, par. 732)

7 Sec. 32. Powers and duties of State Guardian; service
8 limitation; review hearings.

9 (a) The State Guardian shall have the same powers and
10 duties as a private guardian as provided in Article XIa of the
11 Probate Act of 1975, approved August 7, 1975. The State
12 Guardian shall not provide direct residential services to its
13 wards. The State Guardian shall visit and consult with its
14 wards at least four times a year for as long as the
15 guardianship continues. On and after the effective date of this
16 amendatory Act of the 98th General Assembly, the State Guardian
17 may not be appointed as guardian for a person whose primary
18 diagnosis is mental illness within the meaning of Section 11a-2
19 of the Probate Act of 1975.

20 (b) Each ward of the State Guardian who was adjudicated
21 disabled before the effective date of this amendatory Act of
22 the 98th General Assembly and has a primary diagnosis of mental
23 illness shall be the subject of a review hearing in either the

1 county in which the case was established or in which the ward
2 now resides. The court shall appoint a guardian ad litem or
3 advocate to represent the interests of the ward at this
4 hearing, and the State Guardian shall be the petitioner. As
5 soon as practical after the effective date of this amendatory
6 Act of the 98th General Assembly, the State Guardian shall
7 petition under this Section. At the hearing, a ward with a
8 primary diagnosis of mental illness shall be considered
9 eligible for the restoration of his or her rights unless
10 evidence demonstrates, by a clear and convincing standard, that
11 guardianship is still required for the ward with mental illness
12 and that the State Guardian is the only available and suitable
13 guardian. The court shall determine the appropriateness of the
14 restoration of the ward's legal rights and the termination of
15 the adjudication of disability under Section 11a-20 of the
16 Probate Act of 1975. If the court determines that guardianship
17 is still required, it shall consider whether another party may
18 be suitable to serve as guardian. If the court continues the
19 guardianship with the State Guardian, the court shall enter
20 findings of fact in accordance with Section 31 of this Act. The
21 court may also determine that further review under this Section
22 is no longer required.

23 (Source: P.A. 80-1416.)

24 Section 10. The Probate Act of 1975 is amended by changing
25 Sections 11a-12, 13-1, and 13-5 and by adding Section 13-1.3 as

1 follows:

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

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

4 (a) If basis for the appointment of a guardian as specified
5 in Section 11a-3 is not found, the court shall dismiss the
6 petition. If a basis for the appointment of a guardian is
7 found, the court shall issue orders that implement the least
8 restrictive alternative, maximize the alleged disabled
9 person's right to self-determination and autonomy, and
10 exercise authority only to the extent necessitated by the
11 alleged disabled person's limitations. In determining the
12 least restrictive alternative, the court shall consider
13 options that allow the ward to live, learn, and work in a
14 setting that places as few limits as possible on the ward's
15 rights and personal freedom as appropriate to meet the needs of
16 the ward.

17 (b) If the respondent is adjudged to be disabled and to
18 lack some but not all of the capacity as specified in Section
19 11a-3, and if the court finds that guardianship is necessary
20 for the protection of the disabled person, his or her estate,
21 or both, the court shall appoint a limited guardian of ~~for~~ the
22 respondent's person or estate or both. The court shall enter a
23 written order stating the factual basis for its findings and
24 specifying the duties and powers of the guardian and the legal
25 disabilities to which the respondent is subject. If

1 guardianship is found to be necessary, the court shall ensure
2 that limited guardianship is strongly favored and that plenary
3 guardianship is applied only as a last resort, consistent with
4 subsection (c) of this Section.

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

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

18 (Source: P.A. 97-1093, eff. 1-1-13.)

19 (755 ILCS 5/13-1) (from Ch. 110 1/2, par. 13-1)

20 Sec. 13-1. Appointment and term of public administrator and
21 public guardian.) Except as provided in Sections ~~Section~~ 13-1.1
22 and 13-1.3, before the first Monday of December, 1977 and every
23 4 years thereafter, and as often as vacancies occur, the
24 Governor, by and with the advice and consent of the Senate,
25 shall appoint in each county a suitable person to serve as

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

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

14 (755 ILCS 5/13-1.3 new)

15 Sec. 13-1.3. Transition to Office of State Guardian. In
16 counties having a population of 1,000,000 or less, and in which
17 there is no currently serving public guardian or in which there
18 is a public guardian serving under an expired term of office,
19 the Governor shall, within 90 days after the effective date of
20 this amendatory Act of the 98th General Assembly, appoint the
21 Office of State Guardian as the public guardian. Subsequently,
22 in counties having a population of 1,000,000 or less and upon
23 the expiration of the public guardian's term, the State
24 Guardian shall be appointed as the public guardian. The State
25 Guardian appointed as public guardian shall serve continuously

1 and is not be subject to 4 year terms of appointment. In cases
2 in which the State Guardian serves as the public guardian, the
3 State Guardian shall assume only the duties described in
4 Sections 30 and 32 of the Guardianship and Advocacy Act and
5 shall be otherwise subject to the provisions of the
6 Guardianship and Advocacy Act and not this Article XIII.

7 (755 ILCS 5/13-5) (from Ch. 110 1/2, par. 13-5)

8 Sec. 13-5. Powers and duties of public guardian.) The court
9 may appoint the public guardian as the guardian of any disabled
10 adult who is in need of a public guardian and whose estate
11 exceeds \$100,000 and is located in a county having a population
12 in excess of 1,000,000 ~~\$25,000~~. When a disabled adult who has a
13 smaller estate is in need of guardianship services in a county
14 having a population in excess of 1,000,000, the court shall
15 appoint the State guardian pursuant to Section 30 of the
16 Guardianship and Advocacy Act. If the public guardian is
17 appointed guardian of a disabled adult and the estate of the
18 disabled adult is thereafter reduced to less than \$100,000
19 ~~\$25,000~~, the court may, upon the petition of the public
20 guardian and the approval by the court of a final accounting of
21 the disabled adult's estate, discharge the public guardian and
22 transfer the guardianship to the State guardian. The public
23 guardian shall serve not less than 14 days' notice to the State
24 guardian of the hearing date regarding the transfer. When
25 appointed by the court, the public guardian has the same powers

1 and duties as other guardians appointed under this Act, with
2 the following additions and modifications:

3 (a) The public guardian shall monitor the ward and his care
4 and progress on a continuous basis. Monitoring shall at minimum
5 consist of monthly contact with the ward, and the receipt of
6 periodic reports from all individuals and agencies, public or
7 private, providing care or related services to the ward.

8 (b) Placement of a ward outside of the ward's home may be
9 made only after the public guardian or his representative has
10 visited the facility in which placement is proposed.

11 (c) The public guardian shall prepare an inventory of the
12 ward's belongings and assets and shall maintain insurance on
13 all of the ward's real and personal property, unless the court
14 determines, and issues an order finding, that (1) the real or
15 personal property lacks sufficient equity, (2) the estate lacks
16 sufficient funds to pay for insurance, or (3) the property is
17 otherwise uninsurable. No personal property shall be removed
18 from the ward's possession except for storage pending final
19 placement or for liquidation in accordance with this Act.

20 (d) The public guardian shall make no substantial
21 distribution of the ward's estate without a court order.

22 (e) The public guardian may liquidate assets of the ward to
23 pay for the costs of the ward's care and for storage of the
24 ward's personal property only after notice of such pending
25 action is given to all potential heirs at law, unless notice is
26 waived by the court; provided, however, that a person who has

1 been so notified may elect to pay for care or storage or to pay
2 fair market value of the asset or assets sought to be sold in
3 lieu of liquidation.

4 (f) Real property of the ward may be sold at fair market
5 value after an appraisal of the property has been made by a
6 licensed appraiser; provided, however, that the ward's
7 residence may be sold only if the court finds that the ward is
8 not likely to be able to return home at a future date.

9 (g) The public guardian shall, at such intervals as the
10 court may direct, submit to the court an affidavit setting
11 forth in detail the services he has provided for the benefit of
12 the ward.

13 (h) Upon the death of the ward, the public guardian shall
14 turn over to the court-appointed administrator all of the
15 ward's assets and an account of his receipt and administration
16 of the ward's property. A guardian ad litem shall be appointed
17 for an accounting when the estate exceeds the amount set in
18 Section 25-1 of this Act for administration of small estates.

19 (i)(1) On petition of any person who appears to have an
20 interest in the estate, the court by temporary order may
21 restrain the public guardian from performing specified acts of
22 administration, disbursement or distribution, or from exercise
23 of any powers or discharge of any duties of his office, or make
24 any other order to secure proper performance of his duty, if it
25 appears to the court that the public guardian might otherwise
26 take some action contrary to the best interests of the ward.

1 Persons with whom the public guardian may transact business may
2 be made parties.

3 (2) The matter shall be set for hearing within 10 days
4 unless the parties otherwise agree or unless for good cause
5 shown the court determines that additional time is required.
6 Notice as the court directs shall be given to the public
7 guardian and his attorney of record, if any, and to any other
8 parties named defendant in the petition.

9 (j) On petition of the public guardian, the court in its
10 discretion may for good cause shown transfer guardianship to
11 the State guardian.

12 (k) No later than January 31 of each year, the public
13 guardian shall file an annual report with the clerk of the
14 Circuit Court, indicating, with respect to the period covered
15 by the report, the number of cases which he has handled, the
16 date on which each case was assigned, the date of termination
17 of each case which has been closed during the period, the
18 disposition of each terminated case, and the total amount of
19 fees collected during the period from each ward.

20 (l) (Blank).

21 (Source: P.A. 96-752, eff. 1-1-10; 97-1094, eff. 8-24-12.)