



Sen. Ira I. Silverstein

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1 AMENDMENT TO SENATE BILL 1612

2 AMENDMENT NO. _____. Amend Senate Bill 1612 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Guardianship and Advocacy Act is amended by
5 adding Section 33.5 as follows:

6 (20 ILCS 3955/33.5 new)

7 Sec. 33.5. Guardianship training program. The State
8 Guardian may provide a training program that outlines the
9 duties and responsibilities of guardians appointed under
10 Article XIa of the Probate Act of 1975. The training program
11 may be offered to courts at no cost, and shall outline the
12 responsibilities of guardians and the rights of disabled
13 persons in guardianships under Article XIa of the Probate Act
14 of 1975. In developing the training program content, the State
15 Guardian may consult with the courts, State and national
16 guardianship organizations, public guardians, advocacy

1 organizations, and persons and family members with direct
2 experience with adult guardianship.

3 Section 10. The Probate Act of 1975 is amended by changing
4 Sections 11a-5, 11a-12, 11a-17, and 11a-21 as follows:

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

6 Sec. 11a-5. Who may act as guardian.

7 (a) A person is qualified to act as guardian of the person
8 and as guardian of the estate of a disabled person if the court
9 finds that the proposed guardian is capable of providing an
10 active and suitable program of guardianship for the disabled
11 person and that the proposed guardian:

12 (1) has attained the age of 18 years;

13 (2) is a resident of the United States;

14 (3) is not of unsound mind;

15 (4) is not an adjudged disabled person as defined in
16 this Act; ~~and~~

17 (5) has not been convicted of a felony, unless the
18 court finds appointment of the person convicted of a felony
19 to be in the disabled person's best interests, and as part
20 of the best interest determination, the court has
21 considered the nature of the offense, the date of offense,
22 and the evidence of the proposed guardian's
23 rehabilitation. No person shall be appointed who has been
24 convicted of a felony involving harm or threat to an

1 elderly or disabled person, including a felony sexual
2 offense; and -

3 (6) has completed a training program, developed by the
4 State Guardian in accordance with Section 33.5 of the
5 Guardianship and Advocacy Act, that outlines the
6 responsibilities of guardians and the rights of disabled
7 persons, and has been made available at no cost by the
8 court or another suitable provider approved by the court.

9 (b) Any public agency, or not-for-profit corporation found
10 capable by the court of providing an active and suitable
11 program of guardianship for the disabled person, taking into
12 consideration the nature of such person's disability and the
13 nature of such organization's services, may be appointed
14 guardian of the person or of the estate, or both, of the
15 disabled person. The court shall not appoint as guardian an
16 agency which is directly providing residential services to the
17 ward. One person or agency may be appointed guardian of the
18 person and another person or agency appointed guardian of the
19 estate.

20 (c) Any corporation qualified to accept and execute trusts
21 in this State may be appointed guardian of the estate of a
22 disabled person.

23 (d) Public guardians, state guardians, attorneys currently
24 authorized to practice law, and persons who are certified as
25 National Certified Guardians by the Center for Guardianship
26 Certification are exempt from the training requirement under

1 paragraph (6) of subsection (a) of this Section.

2 (Source: P.A. 94-579, eff. 8-12-05.)

3 (755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)

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

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

8 (b) If the respondent is adjudged to be disabled and to
9 lack some but not all of the capacity as specified in Section
10 11a-3, and if the court finds that guardianship is necessary
11 for the protection of the disabled person, his or her estate,
12 or both, the court shall appoint a limited guardian for the
13 respondent's person or estate or both. The court shall enter a
14 written order stating the factual basis for its findings and
15 specifying the duties and powers of the guardian and the legal
16 disabilities to which the respondent is subject.

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

25 (d) The selection of the guardian shall be in the

1 discretion of the court, which shall give due consideration to
2 the preference of the disabled person as to a guardian, as well
3 as the qualifications of the proposed guardian, in making its
4 appointment. A proposed guardian shall complete, prior to a
5 limited or plenary guardianship appointment, a training
6 program for guardians as provided in subdivision (a)(6) of
7 Section 11a-5 of this Act. The court may make a limited or
8 plenary guardianship appointment conditional on the proposed
9 guardian's completion of the training program.

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

11 (755 ILCS 5/11a-17) (from Ch. 110 1/2, par. 11a-17)

12 Sec. 11a-17. Duties of personal guardian.

13 (a) To the extent ordered by the court and under the
14 direction of the court, the guardian of the person shall have
15 custody of the ward and the ward's minor and adult dependent
16 children and shall procure for them and shall make provision
17 for their support, care, comfort, health, education and
18 maintenance, and professional services as are appropriate, but
19 the ward's spouse may not be deprived of the custody and
20 education of the ward's minor and adult dependent children,
21 without the consent of the spouse, unless the court finds that
22 the spouse is not a fit and competent person to have that
23 custody and education. The guardian shall assist the ward in
24 the development of maximum self-reliance and independence. The
25 guardian of the person may petition the court for an order

1 directing the guardian of the estate to pay an amount
2 periodically for the provision of the services specified by the
3 court order. If the ward's estate is insufficient to provide
4 for education and the guardian of the ward's person fails to
5 provide education, the court may award the custody of the ward
6 to some other person for the purpose of providing education. If
7 a person makes a settlement upon or provision for the support
8 or education of a ward, the court may make an order for the
9 visitation of the ward by the person making the settlement or
10 provision as the court deems proper. A guardian of the person
11 may not admit a ward to a mental health facility except at the
12 ward's request as provided in Article IV of the Mental Health
13 and Developmental Disabilities Code and unless the ward has the
14 capacity to consent to such admission as provided in Article IV
15 of the Mental Health and Developmental Disabilities Code.

16 (a-5) If the ward filed a petition for dissolution of
17 marriage under the Illinois Marriage and Dissolution of
18 Marriage Act before the ward was adjudicated a disabled person
19 under this Article, the guardian of the ward's person and
20 estate may maintain that action for dissolution of marriage on
21 behalf of the ward.

22 (b) If the court directs, the guardian of the person shall
23 file with the court at intervals indicated by the court, a
24 report that shall state briefly: (1) the current mental,
25 physical, and social condition of the ward and the ward's minor
26 and adult dependent children; (2) their present living

1 arrangement, and a description and the address of every
2 residence where they lived during the reporting period and the
3 length of stay at each place; (3) a summary of the medical,
4 educational, vocational, and other professional services given
5 to them; (4) a resume of the guardian's visits with and
6 activities on behalf of the ward and the ward's minor and adult
7 dependent children; (5) a recommendation as to the need for
8 continued guardianship; (6) any other information requested by
9 the court or useful in the opinion of the guardian. The Office
10 of the State Guardian shall assist the guardian in filing the
11 report when requested by the guardian. The court may take such
12 action as it deems appropriate pursuant to the report.

13 (c) Absent court order pursuant to the Illinois Power of
14 Attorney Act directing a guardian to exercise powers of the
15 principal under an agency that survives disability, the
16 guardian has no power, duty, or liability with respect to any
17 personal or health care matters covered by the agency. This
18 subsection (c) applies to all agencies, whenever and wherever
19 executed.

20 (d) A guardian acting as a surrogate decision maker under
21 the Health Care Surrogate Act shall have all the rights of a
22 surrogate under that Act without court order including the
23 right to make medical treatment decisions such as decisions to
24 forgo or withdraw life-sustaining treatment. Any decisions by
25 the guardian to forgo or withdraw life-sustaining treatment
26 that are not authorized under the Health Care Surrogate Act

1 shall require a court order. Nothing in this Section shall
2 prevent an agent acting under a power of attorney for health
3 care from exercising his or her authority under the Illinois
4 Power of Attorney Act without further court order, unless a
5 court has acted under Section 2-10 of the Illinois Power of
6 Attorney Act. If a guardian is also a health care agent for the
7 ward under a valid power of attorney for health care, the
8 guardian acting as agent may execute his or her authority under
9 that act without further court order.

10 (e) Decisions made by a guardian on behalf of a ward shall
11 be made in accordance with the following standards for decision
12 making. Decisions made by a guardian on behalf of a ward may be
13 made by conforming as closely as possible to what the ward, if
14 competent, would have done or intended under the circumstances,
15 taking into account evidence that includes, but is not limited
16 to, the ward's personal, philosophical, religious and moral
17 beliefs, and ethical values relative to the decision to be made
18 by the guardian. Where possible, the guardian shall determine
19 how the ward would have made a decision based on the ward's
20 previously expressed preferences, and make decisions in
21 accordance with the preferences of the ward. If the ward's
22 wishes are unknown and remain unknown after reasonable efforts
23 to discern them, the decision shall be made on the basis of the
24 ward's best interests as determined by the guardian. In
25 determining the ward's best interests, the guardian shall weigh
26 the reason for and nature of the proposed action, the benefit

1 or necessity of the action, the possible risks and other
2 consequences of the proposed action, and any available
3 alternatives and their risks, consequences and benefits, and
4 shall take into account any other information, including the
5 views of family and friends, that the guardian believes the
6 ward would have considered if able to act for herself or
7 himself.

8 (f) Upon petition by any interested person (including the
9 standby or short-term guardian), with such notice to interested
10 persons as the court directs and a finding by the court that it
11 is in the best interest of the disabled person, the court may
12 terminate or limit the authority of a standby or short-term
13 guardian or may enter such other orders as the court deems
14 necessary to provide for the best interest of the disabled
15 person. The petition for termination or limitation of the
16 authority of a standby or short-term guardian may, but need
17 not, be combined with a petition to have another guardian
18 appointed for the disabled person.

19 (g) A guardian of the person shall complete, prior to a
20 limited or plenary guardianship appointment, a training
21 program for guardians as provided in subdivision (a)(6) of
22 Section 11a-5 of this Act.

23 (Source: P.A. 96-612, eff. 1-1-10.)

24 (755 ILCS 5/11a-21) (from Ch. 110 1/2, par. 11a-21)

25 Sec. 11a-21. Hearing. (a) The court shall conduct a hearing

1 on a petition filed under Section 11a-20. The ward is entitled
2 to be represented by counsel, to demand a jury of 6 persons, to
3 present evidence and to confront and cross-examine all
4 witnesses. The court (1) may appoint counsel for the ward, if
5 the court finds that the interests of the ward will be best
6 served by the appointment and (2) shall appoint counsel upon
7 the ward's request or if the respondent takes a position
8 adverse to that of the guardian ad litem. The court may allow
9 the guardian ad litem and counsel for the ward reasonable
10 compensation.

11 (b) If the ward is unable to pay the fee of the guardian ad
12 litem or appointed counsel, or both, the court shall enter an
13 order upon the State to pay, from funds appropriated by the
14 General Assembly for that purpose, all such fees or such
15 amounts as the ward is unable to pay.

16 (c) Upon conclusion of the hearing, the court shall enter
17 an order setting forth the factual basis for its findings and
18 may: (1) dismiss the petition; (2) terminate the adjudication
19 of disability; (3) revoke the letters of guardianship of the
20 estate or person, or both; (4) modify the duties of the
21 guardian; ~~and~~ (5) require the guardian to complete a training
22 program as provided in subdivision (a)(6) of Section 11a-5 of
23 this Act; and (6) make any other order which the court deems
24 appropriate and in the interests of the ward.

25 (Source: P.A. 81-1509.)

1 Section 99. Effective date. This Act takes effect one year
2 after becoming law.".