

1 AN ACT in relation to guardianship.

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
5 changing Sections 11-3, 11-5, 11-6, and 11-7 as follows:

6 (755 ILCS 5/11-3) (from Ch. 110 1/2, par. 11-3)

7 Sec. 11-3. Who may act as guardian.

8 (a) A person who has attained the age of 18 years, is a
9 resident of the United States, is not of unsound mind, is not
10 an adjudged disabled person as defined in this Act, has not
11 been convicted of a felony within 5 years preceding the
12 guardianship proceeding, and who the court finds is capable
13 of providing an active and suitable program of guardianship
14 for the minor is qualified to act as guardian of the person
15 and as guardian of the estate. The court shall conduct a
16 best-interest hearing in all cases in which a proposed
17 guardian has been convicted of a felony more than 5 years
18 prior to the guardianship proceeding. If the court finds
19 that it is in the best interests of the minor to appoint the
20 guardian, the court shall state in writing the factual bases
21 supporting its finding. One person may be appointed guardian
22 of the person and another person appointed guardian of the
23 estate.

24 (b) The Department of Human Services or the Department
25 of Children and Family Services may with the approval of the
26 court designate one of its employees to serve without fees as
27 guardian of the estate of a minor patient in a State mental
28 hospital or a resident in a State institution when the value
29 of the personal estate does not exceed \$1,000.

30 (Source: P.A. 89-507, eff. 7-1-97; 90-430, eff. 8-16-97;
31 90-472, eff. 8-17-97.)

1 (755 ILCS 5/11-5) (from Ch. 110 1/2, par. 11-5)
2 Sec. 11-5. Appointment of guardian.

3 (a) Upon the filing of a petition for the appointment of
4 a guardian or on its own motion, the court may appoint a
5 guardian, who is either a relative or a non-relative, of the
6 estate or of both the person and estate, of a minor, or may
7 appoint a guardian of the person only of a minor or minors,
8 as the court finds to be in the best interest of the minor or
9 minors. The court may appoint a guardian for an unmarried
10 minor if any of the following circumstances exist:

11 (1) The parental rights of both parents or the
12 surviving parent are terminated or suspended by a prior
13 court order, by judgment of divorce, by judgment of
14 custody, by legal separation, by death, by judicial
15 determination of mental incompetency, by disappearance,
16 or by confinement in a place of detention; or

17 (2) The parent or parents permit the minor to
18 reside with another person and do not provide the other
19 person with legal authority for the minor's care and
20 maintenance, and the minor is not residing with his or
21 her parent or parents at the time the petition is filed;
22 or

23 (3) When all of the following conditions exist:

24 (i) The minor's biological parents have never
25 been married to one another, and there has been no
26 judicial finding of paternity; and

27 (ii) The minor's parent who has custody of the
28 minor dies or is missing and the other parent has
29 not been granted legal custody under court order;
30 and

31 (iii) The person whom the petition asks to be
32 appointed guardian is related to the minor.

33 (a-1) A parent, adoptive parent or adjudicated parent,
34 whose parental rights have not been terminated, may designate

1 in any writing, including a will, a person, who is either a
2 relative or non-relative, qualified to act under Section 11-3
3 to be appointed as guardian of the person or estate, or both,
4 of an unmarried minor or of a child likely to be born. A
5 parent, adoptive parent or adjudicated parent, whose parental
6 rights have not been terminated, or a guardian or a standby
7 guardian of an unmarried minor or of a child likely to be
8 born may designate in any writing, including a will, a person
9 qualified to act under Section 11-3 to be appointed as
10 successor guardian of the minor's person or estate, or both.
11 The designation must be witnessed by 2 or more credible
12 witnesses at least 18 years of age, neither of whom is the
13 person designated as the guardian. The designation may be
14 proved by any competent evidence. If the designation is
15 executed and attested in the same manner as a will, it shall
16 have prima facie validity. The designation of a guardian or
17 successor guardian does not affect the rights of the other
18 parent in the minor.

19 (b) The court lacks jurisdiction to proceed on a
20 petition for the appointment of a guardian of a minor if (i)
21 the minor has a living parent, adoptive parent or adjudicated
22 parent, whose parental rights have not been terminated, whose
23 whereabouts are known, and who is willing and able to make
24 and carry out day-to-day child care decisions concerning the
25 minor, unless the parent or parents consent to the
26 appointment or, after receiving notice of the hearing under
27 Section 11-10.1, fail to object to the appointment at the
28 hearing on the petition or (ii) there is a guardian for the
29 minor appointed by a court of competent jurisdiction. There
30 shall be a rebuttable presumption that a parent of a minor is
31 willing and able to make and carry out day-to-day child care
32 decisions concerning the minor, but the presumption may be
33 rebutted by a preponderance of the evidence.

34 (b-1) If the court finds the appointment of a guardian

1 of the minor to be in the best interest of the minor, and if
2 a standby guardian has previously been appointed for the
3 minor under Section 11-5.3, the court shall appoint the
4 standby guardian as the guardian of the person or estate, or
5 both, of the minor unless the court finds, upon good cause
6 shown, that the appointment would no longer be in the best
7 interest of the minor.

8 (c) If the minor is 14 years of age or more, the minor
9 may nominate the guardian of the minor's person and estate,
10 subject to approval of the court. If the minor's nominee is
11 not approved by the court or if, after notice to the minor,
12 the minor fails to nominate a guardian of the minor's person
13 or estate, the court may appoint the guardian without
14 nomination.

15 (d) The court shall not appoint as guardian of the
16 person of the minor any person whom the court has determined
17 had caused or substantially contributed to the minor becoming
18 a neglected or abused minor as defined in the Juvenile Court
19 Act of 1987 unless 2 years have elapsed since the last proven
20 incident of abuse or neglect and the court determines that
21 appointment of such person as guardian is in the best
22 interests of the minor.

23 (e) Previous statements made by the minor relating to
24 any allegations that the minor is an abused or neglected
25 child within the meaning of the Abused and Neglected Child
26 Reporting Act, or an abused or neglected minor within the
27 meaning of the Juvenile Court Act of 1987, shall be
28 admissible in evidence in a hearing concerning appointment of
29 a guardian of the person or estate of the minor. No such
30 statement, however, if uncorroborated and not subject to
31 cross-examination, shall be sufficient in itself to support a
32 finding of abuse or neglect.

33 (Source: P.A. 90-430, eff. 8-16-97; 90-472, eff. 8-17-97;
34 90-796, eff. 12-15-98.)

1 (755 ILCS 5/11-6) (from Ch. 110 1/2, par. 11-6)
2 Sec. 11-6. Venue.) If the minor is a resident of this
3 State, the proceeding shall be instituted in the court of the
4 county in which he resides. If the minor is not a resident
5 of this State, the proceeding shall be instituted in the
6 court of a county in which his real or personal estate is
7 located. If the minor is the subject of a proceeding in
8 Juvenile Court, the proceeding shall be instituted in the
9 court of the county in which the Juvenile Court proceeding is
10 pending.

11 (Source: P.A. 80-1415.)

12 (755 ILCS 5/11-7) (from Ch. 110 1/2, par. 11-7)
13 Sec. 11-7. Parental right to custody.)
14 (a) If the parents were not married at the time of the
15 minor's birth, or if there has never been a judicial finding
16 of paternity, the court shall conduct a hearing to determine
17 paternity.

18 (b) If both parents of a minor are living and are
19 competent to transact their own business and are fit persons,
20 they are entitled to the custody of the person of the minor
21 and the direction of his education. If one parent is dead and
22 the surviving parent is competent to transact his own
23 business and is a fit person, he is similarly entitled. The
24 parents have equal powers, rights and duties concerning the
25 minor. If the parents live apart, the court for good reason
26 may award the custody and education of the minor to either
27 parent or to some other person.

28 (Source: P.A. 79-328.)