



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2663

Introduced 1/10/2024, by Sen. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-3	from Ch. 110 1/2, par. 11a-3
755 ILCS 5/11a-10	from Ch. 110 1/2, par. 11a-10
755 ILCS 5/11a-19	from Ch. 110 1/2, par. 11a-19
755 ILCS 9/5	
755 ILCS 9/10	
755 ILCS 9/45	
755 ILCS 9/50	
755 ILCS 40/25	from Ch. 110 1/2, par. 851-25

Amends the Probate Act of 1975. Provides that upon the filing of a petition by a reputable person or by the alleged person with a disability himself or on its own motion, the court may adjudge a person to be a person with a disability, but only if it has been demonstrated by clear and convincing evidence that the person is a person with a disability and the person cannot be supported through a supported decision-making agreement. Provides that at the time of the appointment of a guardian the court shall inform the ward of his right to petition for termination of an adjudication of disability using a supported decision-making agreement. Makes other changes. Amends the Supported Decision-Making Agreement Act. Changes the definition of "principal" to mean an adult (rather than an adult with intellectual or developmental disabilities) who seeks to enter, or has entered, into a supported decision-making agreement with a supporter. Allows a principal to elect to nominate the supporter as the principal's health care surrogate and may act as the principal's health care surrogate when the standards set forth in the Health Care Surrogate Act have been met. Makes conforming changes. Amends the Health Care Surrogate Act. Provides that a supporter designated under a supported decision-making agreement has second priority to make decisions on behalf of a patient.

LRB103 36137 LNS 66228 b

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 changing
5 Sections 11a-3, 11a-10, and 11a-19 as follows:

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

7 Sec. 11a-3. Adjudication of disability; Power to appoint
8 guardian.

9 (a) Upon the filing of a petition by a reputable person or
10 by the alleged person with a disability himself or on its own
11 motion, the court may adjudge a person to be a person with a
12 disability, but only if it has been demonstrated by clear and
13 convincing evidence that the person is a person with a
14 disability as defined in Section 11a-2 and the person cannot
15 be supported through a supported decision-making agreement. If
16 the court adjudges a person to be a person with a disability,
17 the court may appoint (1) a guardian of his person, if it has
18 been demonstrated by clear and convincing evidence that
19 because of his disability he lacks sufficient understanding or
20 capacity to make or communicate responsible decisions
21 concerning the care of his person, or (2) a guardian of his
22 estate, if it has been demonstrated by clear and convincing
23 evidence that because of his disability he is unable to manage

1 his estate or financial affairs, or (3) a guardian of his
2 person and of his estate. The court may appoint co-guardians
3 in accordance with Section 11a-15.

4 (b) Guardianship shall be utilized only as is necessary to
5 promote the well-being of the person with a disability, to
6 protect him from neglect, exploitation, or abuse, and to
7 encourage development of his maximum self-reliance and
8 independence. Guardianship shall be ordered only to the extent
9 necessitated by the individual's actual mental, physical and
10 adaptive limitations. The order shall conform with Sections
11 11a-12 and 11a-14.

12 (Source: P.A. 102-72, eff. 1-1-22.)

13 (755 ILCS 5/11a-10) (from Ch. 110 1/2, par. 11a-10)

14 Sec. 11a-10. Procedures preliminary to hearing.

15 (a) Upon the filing of a petition pursuant to Section
16 11a-8, the court shall set a date and place for hearing to take
17 place within 30 days. The court shall appoint a guardian ad
18 litem to report to the court concerning the respondent's best
19 interests consistent with the provisions of this Section,
20 except that the appointment of a guardian ad litem shall not be
21 required when the court determines that such appointment is
22 not necessary for the protection of the respondent or a
23 reasonably informed decision on the petition. If the guardian
24 ad litem is not a licensed attorney, he or she shall be
25 qualified, by training or experience, to work with or advocate

1 for persons with developmental disabilities, the mentally ill,
2 persons with physical disabilities, the elderly, or persons
3 with a disability due to mental deterioration, depending on
4 the type of disability that is alleged in the petition. The
5 court may allow the guardian ad litem reasonable compensation.
6 The guardian ad litem may consult with a person who by training
7 or experience is qualified to work with persons with a
8 developmental disability, persons with mental illness, persons
9 with physical disabilities, or persons with a disability due
10 to mental deterioration, depending on the type of disability
11 that is alleged. The guardian ad litem shall personally
12 observe the respondent prior to the hearing and shall inform
13 him orally and in writing of the contents of the petition and
14 of his rights, including providing a copy of the notice of
15 rights required under subsection (e). The guardian ad litem
16 shall also attempt to elicit the respondent's position
17 concerning the adjudication of disability, the proposed
18 guardian, a proposed change in residential placement, changes
19 in care that might result from the guardianship, and other
20 areas of inquiry deemed appropriate by the court, including
21 whether a supported decision-making agreement would be an
22 appropriate alternative to guardianship. Notwithstanding any
23 provision in the Mental Health and Developmental Disabilities
24 Confidentiality Act or any other law, a guardian ad litem
25 shall have the right to inspect and copy any medical or mental
26 health record of the respondent which the guardian ad litem

1 deems necessary, provided that the information so disclosed
2 shall not be utilized for any other purpose nor be redisclosed
3 except in connection with the proceedings. At or before the
4 hearing, the guardian ad litem shall file a written report
5 detailing his or her observations of the respondent, the
6 responses of the respondent to any of the inquiries detailed
7 in this Section, the opinion of the guardian ad litem or other
8 professionals with whom the guardian ad litem consulted
9 concerning the appropriateness of guardianship, and any other
10 material issue discovered by the guardian ad litem, including
11 whether a supported decision-making agreement would be an
12 appropriate alternative to guardianship. The guardian ad litem
13 shall appear at the hearing and testify as to any issues
14 presented in his or her report.

15 (b) The court (1) may appoint counsel for the respondent,
16 if the court finds that the interests of the respondent will be
17 best served by the appointment, and (2) shall appoint counsel
18 upon the respondent's request or if the respondent takes a
19 position adverse to that of the guardian ad litem. The
20 respondent shall be permitted to obtain the appointment of
21 counsel either at the hearing or by any written or oral request
22 communicated to the court prior to the hearing. The summons
23 shall inform the respondent of this right to obtain appointed
24 counsel. The court may allow counsel for the respondent
25 reasonable compensation.

26 (c) The allocation of guardian ad litem fees and costs is

1 within the discretion of the court. No legal fees, appointed
2 counsel fees, guardian ad litem fees, or costs shall be
3 assessed against the Office of the State Guardian, the public
4 guardian, an adult protective services agency, the Department
5 of Children and Family Services, or the agency designated by
6 the Governor under Section 1 of the Protection and Advocacy
7 for Persons with Developmental Disabilities Act.

8 (d) The hearing may be held at such convenient place as the
9 court directs, including at a facility in which the respondent
10 resides.

11 (e) Unless he is the petitioner, the respondent shall be
12 personally served with a copy of the petition and a summons not
13 less than 14 days before the hearing. The summons shall be
14 printed in large, bold type and shall include the following:

15 NOTICE OF RIGHTS OF RESPONDENT

16 You have been named as a respondent in a guardianship
17 petition asking that you be declared a person with a
18 disability. If the court grants the petition, a guardian will
19 be appointed for you. A copy of the guardianship petition is
20 attached for your convenience.

21 The date and time of the hearing are:

22 The place where the hearing will occur is:

23 The Judge's name and phone number is:

24 If a guardian is appointed for you, the guardian may be
25 given the right to make all important personal decisions for
26 you, such as where you may live, what medical treatment you may

1 receive, what places you may visit, and who may visit you. A
2 guardian may also be given the right to control and manage your
3 money and other property, including your home, if you own one.
4 You may lose the right to make these decisions for yourself.

5 You have the following legal rights:

6 (1) You have the right to be present at the court
7 hearing.

8 (2) You have the right to be represented by a lawyer,
9 either one that you retain, or one appointed by the Judge.

10 (3) You have the right to ask for a jury of six persons
11 to hear your case.

12 (4) You have the right to present evidence to the
13 court and to confront and cross-examine witnesses.

14 (5) You have the right to ask the Judge to appoint an
15 independent expert to examine you and give an opinion
16 about your need for a guardian.

17 (6) You have the right to ask that the court hearing be
18 closed to the public.

19 (7) You have the right to tell the court whom you
20 prefer to have for your guardian.

21 (8) You have the right to ask a judge to find that
22 although you lack some capacity to make your own
23 decisions, you can make other decisions, and therefore it
24 is best for the court to appoint only a limited guardian
25 for you.

26 You do not have to attend the court hearing if you do not

1 want to be there. If you do not attend, the Judge may appoint a
2 guardian if the Judge finds that a guardian would be of benefit
3 to you. The hearing will not be postponed or canceled if you do
4 not attend. If you are unable to attend the hearing in person
5 or you will suffer harm if you attend, the Judge can decide to
6 hold the hearing at a place that is convenient. The Judge can
7 also follow the rule of the Supreme Court of this State, or its
8 local equivalent, and decide if a video conference is
9 appropriate.

10 IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO
11 NOT WANT A GUARDIAN OR IF YOU WANT SOMEONE OTHER THAN THE
12 PERSON NAMED IN THE GUARDIANSHIP PETITION TO BE YOUR GUARDIAN.
13 IF YOU DO NOT WANT A GUARDIAN OR IF YOU HAVE ANY OTHER
14 PROBLEMS, YOU SHOULD CONTACT AN ATTORNEY OR COME TO COURT AND
15 TELL THE JUDGE.

16 Service of summons and the petition may be made by a
17 private person 18 years of age or over who is not a party to
18 the action.

19 [END OF FORM]

20 (f) Notice of the time and place of the hearing shall be
21 given by the petitioner by mail or in person to those persons,
22 including the proposed guardian, whose names and addresses
23 appear in the petition and who do not waive notice, not less
24 than 14 days before the hearing.

25 (Source: P.A. 102-72, eff. 1-1-22; 102-191, eff. 1-1-22;
26 102-813, eff. 5-13-22.)

1 (755 ILCS 5/11a-19) (from Ch. 110 1/2, par. 11a-19)

2 Sec. 11a-19. Notice of right to seek modification. At the
3 time of the appointment of a guardian the court shall inform
4 the ward of his right under Section 11a-20 to petition for
5 termination of adjudication of disability, revocation of the
6 letters of guardianship of the estate or person, or both, ~~or~~
7 modification of the duties of the guardian, or termination of
8 an adjudication of disability using a supported
9 decision-making agreement under the Supported Decision-Making
10 Agreement Act and shall give the ward a written statement
11 explaining this right and the procedures for petitioning the
12 court. The notice shall be in large type and shall be in a
13 format substantially similar to the following:

14 IN THE CIRCUIT COURT OF THE ... JUDICIAL CIRCUIT OF ILLINOIS
15 ... COUNTY
16 IN RE THE ESTATE OF)
17)
18) CASE NO.
19 a Person with a Disability,)

20 NOTICE TO WARD OF RIGHT TO SEEK MODIFICATION

21 [Insert name] was appointed your Guardian of the Person on
22 [insert date].

23 [Insert name] was appointed your Guardian of the Estate on

1 [insert date].

2 You have the right to ask the court to dismiss this
3 guardianship, to revoke the power of this guardian to act for
4 you, or to modify the duties of any such guardian.

5 You, or someone on your behalf, can make this request,
6 even by an informal letter, a telephone call, or a visit to the
7 court. You should send your letter to the court at the
8 following address; [insert name of judge and mailing address
9 of courthouse].

10 The court may appoint a Guardian ad Litem to investigate
11 and report to the court. You have the right to have a lawyer
12 appointed for you, to have a hearing before the court, to have
13 a jury of six persons decide the facts, to present evidence and
14 tell your story, and to ask witnesses any questions in
15 cross-examination.

16 Entered this.....day of....., 20....
17
18 JUDGE

19 [...] At the time of the appointment of the Guardian in this
20 cause, the court informed the ward of his or her rights under
21 Section 11a-20 of the Illinois Probate Act and gave the ward,
22 in open court, the above-written notice explaining these
23 rights and procedures.

24 or

1 [...] The Clerk of the Circuit Court shall mail a copy of the
2 above-written notice to the above-named person with a
3 disability at the residence address set forth in the petition
4 filed herein.

5 Copy Mailed:

6

7 Clerk of the Circuit Court

8 [END OF FORM]

9 (Source: P.A. 102-72, eff. 1-1-22.)

10 Section 10. The Supported Decision-Making Agreement Act is
11 amended by changing Sections 5, 10, 45, and 50 as follows:

12 (755 ILCS 9/5)

13 Sec. 5. Purpose; interpretation. The purpose of this Act
14 is to recognize a less-restrictive alternative to guardianship
15 for adults ~~with intellectual and developmental disabilities~~
16 who need assistance with decisions regarding daily living.

17 This Act shall be administered and interpreted in
18 accordance with the following principles:

19 (1) All adults should be able to live in the manner
20 they choose and to accept or refuse support, assistance,

1 or protection as long as they do not harm others and are
2 capable of making decisions about those matters.

3 (2) All adults should be able to be informed about
4 and, to the best of their ability, participate in
5 decisions regarding daily living.

6 (3) All adults should receive the most effective yet
7 least restrictive and intrusive forms of support,
8 assistance, and protection when they are unable to care
9 for themselves or manage their affairs alone.

10 (4) The values, beliefs, wishes, cultural norms, and
11 traditions that the principal holds should be respected.

12 (Source: P.A. 102-614, eff. 2-27-22.)

13 (755 ILCS 9/10)

14 Sec. 10. Definitions. As used in this Act:

15 "Adult" means a person who is at least 18 years of age.

16 "Everyday life decisions" means decisions that support
17 one's existence, including, but not limited to, decisions
18 regarding medical care and treatment, one's residence, work,
19 finances, and social life.

20 "Principal" means an adult ~~with intellectual or~~
21 ~~developmental disabilities~~ who seeks to enter, or has entered,
22 into a supported decision-making agreement with a supporter
23 under this Act.

24 "Supported decision-making agreement" means an agreement
25 between a principal and a supporter under this Act.

1 "Supporter" means an adult who has entered into a
2 supported decision-making agreement with a principal under
3 this Act.

4 (Source: P.A. 102-614, eff. 2-27-22.)

5 (755 ILCS 9/45)

6 Sec. 45. Authorization and witnesses.

7 (a) A principal and his or her supporter entering into a
8 supported decision-making agreement shall sign and date the
9 agreement in the presence of 2 or more subscribing witnesses
10 who are at least 18 years of age. The principal's supporter
11 shall not serve as a witness to the supported ~~support~~
12 decision-making agreement.

13 (b) The principal may elect to nominate the supporter as
14 the principal's health care surrogate and may act as the
15 principal's health care surrogate when the standards set forth
16 in the Health Care Surrogate Act have been met.

17 (Source: P.A. 102-614, eff. 2-27-22.)

18 (755 ILCS 9/50)

19 Sec. 50. Agreement instrument. A supported decision-making
20 agreement is valid if it substantially follows the following
21 form:

22 "SUPPORTED DECISION-MAKING AGREEMENT

23 Important Information for the Supporter: Duties

1 If you agree to provide support to the principal, you have
2 a duty to:

- 3 (1) act in good faith;
- 4 (2) act within the authority granted in this
5 agreement;
- 6 (3) act loyally and without self-interest; and
- 7 (4) avoid conflicts of interest.

8 Appointment of Supporter

9 I, (insert principal's name), make this agreement of my
10 own free will.

11 I agree and designate that the following individual is my
12 supporter:

13 Name:.....

14 Address:

15 Phone Number:.....

16 Email Address:

17 (Yes/No) I name my supporter to act as my health care
18 surrogate in the event I am determined, according to the terms
19 of the Health Care Surrogate Act, to be unable to make my own
20 medical decisions.

1 My supporter is to help me make decisions for myself and
2 may help me with making everyday life decisions relating to
3 the following:

4 (Yes/No) obtaining food, clothing, and shelter.

5 (Yes/No) taking care of my physical and emotional
6 health.

7 (Yes/No) managing my financial affairs.

8 (Yes/No) applying for public benefits.

9 (Yes/No) helping me find work.

10 (Yes/No) assisting with residential services.

11 (Yes/No) helping me with school.

12 (Yes/No) helping me advocate for myself.

13 My supporter is not allowed to make decisions for me. To
14 help me with my decisions, my supporter may:

15 (1) help me access, collect, or obtain information
16 that is relevant to a decision, including medical,
17 psychological, financial, educational, housing, and
18 treatment records;

19 (2) help me understand my options so that I can make an
20 informed decision; and

21 (3) help me communicate my decision to appropriate
22 persons.

23 I want my supporter to have:

24 (Yes/No) A release allowing my supporter to see

1 protected health information under the Health Insurance
2 Portability and Accountability Act of 1996 is attached.

3 (Yes/No) A release allowing my supporter to see
4 confidential information under the Mental Health and
5 Developmental Disabilities Confidentiality Act is
6 attached.

7 (Yes/No) A release allowing my supporter to see
8 educational records under the Family Educational Rights
9 and Privacy Act of 1974 and the Illinois School Records
10 Act is attached.

11 (Yes/No) A release allowing my supporter to see
12 substance abuse records under Confidentiality of Alcohol
13 and Drug Abuse Patient Records regulations is attached.

14 This supported decision-making agreement is effective
15 immediately and will continue until (insert date) or until the
16 agreement is terminated by my supporter or me or by operation
17 of law.

18 Signed this day of, 20....

19 (Signature of Principal) (Printed name of principal)

20 Consent of Supporter

21 I, (name of supporter), consent to act as a supporter
22 under this agreement.

1 (Signature of supporter) (Printed name of supporter)

2 (Witness 1 signature) (Printed name of witness 1)

3 (Witness 2 signature) (Printed name of witness 2)

4 WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

5 IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE
6 OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT
7 THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR
8 EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE
9 ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE ADULT
10 PROTECTIVE SERVICES HOTLINE: 1-866-800-1409, 1-888-206-1327
11 (TTY)."

12 This form is not intended to exclude other forms or
13 agreements that identify the principal, supporter, and types
14 of supports.

15 (Source: P.A. 102-614, eff. 2-27-22.)

16 Section 15. The Health Care Surrogate Act is amended by
17 changing Section 25 as follows:

18 (755 ILCS 40/25) (from Ch. 110 1/2, par. 851-25)

19 Sec. 25. Surrogate decision making.

20 (a) When a patient lacks decisional capacity, the health

1 care provider must make a reasonable inquiry as to the
2 availability and authority of a health care agent under the
3 Powers of Attorney for Health Care Law. When no health care
4 agent is authorized and available, the health care provider
5 must make a reasonable inquiry as to the availability of
6 possible surrogates listed in items (1) through (4) of this
7 subsection. For purposes of this Section, a reasonable inquiry
8 includes, but is not limited to, identifying a member of the
9 patient's family or other health care agent by examining the
10 patient's personal effects or medical records. If a family
11 member or other health care agent is identified, an attempt to
12 contact that person by telephone must be made within 24 hours
13 after a determination by the provider that the patient lacks
14 decisional capacity. No person shall be liable for civil
15 damages or subject to professional discipline based on a claim
16 of violating a patient's right to confidentiality as a result
17 of making a reasonable inquiry as to the availability of a
18 patient's family member or health care agent, except for
19 willful or wanton misconduct.

20 The surrogate decision makers, as identified by the
21 attending physician, are then authorized to make decisions as
22 follows: (i) for patients who lack decisional capacity and do
23 not have a qualifying condition, medical treatment decisions
24 may be made in accordance with subsection (b-5) of Section 20;
25 and (ii) for patients who lack decisional capacity and have a
26 qualifying condition, medical treatment decisions including

1 whether to forgo life-sustaining treatment on behalf of the
2 patient may be made without court order or judicial
3 involvement in the following order of priority:

4 (1) the patient's guardian of the person;

5 (1.5) the supporter when designated by the patient in
6 a supported decision-making agreement under the Supported
7 Decision-Making Agreement Act;

8 (2) the patient's spouse;

9 (3) any adult son or daughter of the patient;

10 (4) either parent of the patient;

11 (5) any adult brother or sister of the patient;

12 (6) any adult grandchild of the patient;

13 (7) a close friend of the patient;

14 (8) the patient's guardian of the estate;

15 (9) the patient's temporary custodian appointed under
16 subsection (2) of Section 2-10 of the Juvenile Court Act
17 of 1987 if the court has entered an order granting such
18 authority pursuant to subsection (12) of Section 2-10 of
19 the Juvenile Court Act of 1987.

20 The health care provider shall have the right to rely on
21 any of the above surrogates if the provider believes after
22 reasonable inquiry that neither a health care agent under the
23 Powers of Attorney for Health Care Law nor a surrogate of
24 higher priority is available.

25 Where there are multiple surrogate decision makers at the
26 same priority level in the hierarchy, it shall be the

1 responsibility of those surrogates to make reasonable efforts
2 to reach a consensus as to their decision on behalf of the
3 patient regarding the forgoing of life-sustaining treatment.
4 If 2 or more surrogates who are in the same category and have
5 equal priority indicate to the attending physician that they
6 disagree about the health care matter at issue, a majority of
7 the available persons in that category (or the parent with
8 custodial rights) shall control, unless the minority (or the
9 parent without custodial rights) initiates guardianship
10 proceedings in accordance with the Probate Act of 1975. No
11 health care provider or other person is required to seek
12 appointment of a guardian.

13 (b) After a surrogate has been identified, the name,
14 address, telephone number, and relationship of that person to
15 the patient shall be recorded in the patient's medical record.

16 (c) Any surrogate who becomes unavailable for any reason
17 may be replaced by applying the provisions of Section 25 in the
18 same manner as for the initial choice of surrogate.

19 (d) In the event an individual of a higher priority to an
20 identified surrogate becomes available and willing to be the
21 surrogate, the individual with higher priority may be
22 identified as the surrogate. In the event an individual in a
23 higher, a lower, or the same priority level or a health care
24 provider seeks to challenge the priority of or the
25 life-sustaining treatment decision of the recognized surrogate
26 decision maker, the challenging party may initiate

1 guardianship proceedings in accordance with the Probate Act of
2 1975.

3 (e) The surrogate decision maker shall have the same right
4 as the patient to receive medical information and medical
5 records and to consent to disclosure.

6 (f) Any surrogate shall have the authority to make
7 decisions for the patient until removed by the patient who no
8 longer lacks decisional capacity, appointment of a guardian of
9 the person, or the patient's death.

10 (Source: P.A. 100-959, eff. 1-1-19.)