

**HB5894**



**96TH GENERAL ASSEMBLY**

**State of Illinois**

**2009 and 2010**

**HB5894**

Introduced 2/10/2010, by Rep. Jehan A. Gordon

**SYNOPSIS AS INTRODUCED:**

755 ILCS 5/11a-10

from Ch. 110 1/2, par. 11a-10

Amends the Probate Act of 1975. Provides that in cases where the Department of Human Services Office of Inspector General is the petitioner, consistent with provisions of the Abuse of Adults with Disabilities Intervention Act concerning the consent of an adult with disabilities to an assessment or to services (instead of consistent with only a portion of those provisions, concerning consent by a guardian of the person of an adult with disabilities), no guardian ad litem or legal fees shall be assessed against the Department of Human Services Office of Inspector General. Effective immediately.

LRB096 19170 AJO 36305 b

**A BILL FOR**

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 Section 11a-10 as follows:

6 (755 ILCS 5/11a-10) (from Ch. 110 1/2, par. 11a-10)

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

8 (a) Upon the filing of a petition pursuant to Section  
9 11a-8, the court shall set a date and place for hearing to take  
10 place within 30 days. The court shall appoint a guardian ad  
11 litem to report to the court concerning the respondent's best  
12 interests consistent with the provisions of this Section,  
13 except that the appointment of a guardian ad litem shall not be  
14 required when the court determines that such appointment is not  
15 necessary for the protection of the respondent or a reasonably  
16 informed decision on the petition. If the guardian ad litem is  
17 not a licensed attorney, he or she shall be qualified, by  
18 training or experience, to work with or advocate for the  
19 developmentally disabled, mentally ill, physically disabled,  
20 the elderly, or persons disabled because of mental  
21 deterioration, depending on the type of disability that is  
22 alleged in the petition. The court may allow the guardian ad  
23 litem reasonable compensation. The guardian ad litem may

1 consult with a person who by training or experience is  
2 qualified to work with persons with a developmental disability,  
3 persons with mental illness, or physically disabled persons, or  
4 persons disabled because of mental deterioration, depending on  
5 the type of disability that is alleged. The guardian ad litem  
6 shall personally observe the respondent prior to the hearing  
7 and shall inform him orally and in writing of the contents of  
8 the petition and of his rights under Section 11a-11. The  
9 guardian ad litem shall also attempt to elicit the respondent's  
10 position concerning the adjudication of disability, the  
11 proposed guardian, a proposed change in residential placement,  
12 changes in care that might result from the guardianship, and  
13 other areas of inquiry deemed appropriate by the court. At or  
14 before the hearing, the guardian ad litem shall file a written  
15 report detailing his or her observations of the respondent, the  
16 responses of the respondent to any of the inquires detailed in  
17 this Section, the opinion of the guardian ad litem or other  
18 professionals with whom the guardian ad litem consulted  
19 concerning the appropriateness of guardianship, and any other  
20 material issue discovered by the guardian ad litem. The  
21 guardian ad litem shall appear at the hearing and testify as to  
22 any issues presented in his or her report.

23 (b) The court (1) may appoint counsel for the respondent,  
24 if the court finds that the interests of the respondent will be  
25 best served by the appointment, and (2) shall appoint counsel  
26 upon respondent's request or if the respondent takes a position

1 adverse to that of the guardian ad litem. The respondent shall  
2 be permitted to obtain the appointment of counsel either at the  
3 hearing or by any written or oral request communicated to the  
4 court prior to the hearing. The summons shall inform the  
5 respondent of this right to obtain appointed counsel. The court  
6 may allow counsel for the respondent reasonable compensation.

7 (c) If the respondent is unable to pay the fee of the  
8 guardian ad litem or appointed counsel, or both, the court may  
9 enter an order for the petitioner to pay all such fees or such  
10 amounts as the respondent or the respondent's estate may be  
11 unable to pay. However, in cases where the Office of State  
12 Guardian is the petitioner, consistent with Section 30 of the  
13 Guardianship and Advocacy Act, where an elder abuse provider  
14 agency is the petitioner, pursuant to Section 9 of the Elder  
15 Abuse and Neglect Act, or where the Department of Human  
16 Services Office of Inspector General is the petitioner,  
17 consistent with Section 45 ~~45(b)~~ of the Abuse of Adults with  
18 Disabilities Intervention Act, no guardian ad litem or legal  
19 fees shall be assessed against the Office of State Guardian,  
20 the elder abuse provider agency, or the Department of Human  
21 Services Office of Inspector General.

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

25 (e) Unless he is the petitioner, the respondent shall be  
26 personally served with a copy of the petition and a summons not

1 less than 14 days before the hearing. The summons shall be  
2 printed in large, bold type and shall include the following  
3 notice:

4 NOTICE OF RIGHTS OF RESPONDENT

5 You have been named as a respondent in a guardianship  
6 petition asking that you be declared a disabled person. If the  
7 court grants the petition, a guardian will be appointed for  
8 you. A copy of the guardianship petition is attached for your  
9 convenience.

10 The date and time of the hearing are:

11 The place where the hearing will occur is:

12 The Judge's name and phone number is:

13 If a guardian is appointed for you, the guardian may be  
14 given the right to make all important personal decisions for  
15 you, such as where you may live, what medical treatment you may  
16 receive, what places you may visit, and who may visit you. A  
17 guardian may also be given the right to control and manage your  
18 money and other property, including your home, if you own one.  
19 You may lose the right to make these decisions for yourself.

20 You have the following legal rights:

21 (1) You have the right to be present at the court  
22 hearing.

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

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

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

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

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

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

10          You do not have to attend the court hearing if you do not  
11          want to be there. If you do not attend, the Judge may appoint a  
12          guardian if the Judge finds that a guardian would be of benefit  
13          to you. The hearing will not be postponed or canceled if you do  
14          not attend.

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

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

24          (f) Notice of the time and place of the hearing shall be  
25          given by the petitioner by mail or in person to those persons,  
26          including the proposed guardian, whose names and addresses

1 appear in the petition and who do not waive notice, not less  
2 than 14 days before the hearing.

3 (Source: P.A. 95-373, eff. 8-23-07.)

4 Section 99. Effective date. This Act takes effect upon  
5 becoming law.