



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

HB5288

Introduced 2/10/2026, by Rep. William "Will" Davis - Michael Crawford

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-17

from Ch. 110 1/2, par. 11a-17

Amends the Probate Act of 1975. Provides that an individual under guardianship who understands the nature, effect, duties, and obligations of marriage does not lose the right to marry without the prior consent of the individual, the guardian, or authorization of the court with some exceptions. Allows a court to remove the right to marry if removal is included as requested relief in a petition for a limited or plenary guardian or upon application of the guardian, and the court finds by clear and convincing evidence after an evidentiary hearing that the individual lacks the capacity to understand the nature, effect, duties, and obligations of a decision to marry. Provides conditions in which an individual from whom the right to marry has been removed may nonetheless marry. Provides that a marriage entered into by one or more individuals from whom the right to marry has been removed is void with some exceptions. Permits a guardian to contest the validity of a marriage under the Illinois Marriage and Dissolution of Marriage Act.

LRB104 18232 JRC 31671 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 Section 11a-17 as follows:

6 (755 ILCS 5/11a-17) (from Ch. 110 1/2, par. 11a-17)

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

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

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

14 (a-3) If a guardian of an estate has not been appointed,
15 the guardian of the person may, without an order of court,
16 open, maintain, and transfer funds to an ABLE account on
17 behalf of the ward and the ward's minor and adult dependent
18 children as specified under Section 16.6 of the State
19 Treasurer Act.

20 (a-5) If the ward filed a petition for dissolution of
21 marriage under the Illinois Marriage and Dissolution of
22 Marriage Act before the ward was adjudicated a person with a
23 disability under this Article, the guardian of the ward's
24 person and estate may maintain that action for dissolution of
25 marriage on behalf of the ward. Upon petition by the guardian
26 of the ward's person or estate, the court may authorize and

1 direct a guardian of the ward's person or estate to file a
2 petition for dissolution of marriage or to file a petition for
3 legal separation or declaration of invalidity of marriage
4 under the Illinois Marriage and Dissolution of Marriage Act on
5 behalf of the ward if the court finds by clear and convincing
6 evidence that the relief sought is in the ward's best
7 interests. In making its determination, the court shall
8 consider the standards set forth in subsection (e) of this
9 Section.

10 (a-10) Except as provided in this subsection, an
11 individual under guardianship who understands the nature,
12 effect, duties, and obligations of marriage does not lose the
13 right to marry and may marry without the prior consent of the
14 individual's guardian or authorization of the court.

15 (a-15) A court may remove the right to marry if:

16 (1) removal of the individual's right to marry is
17 included as requested relief in a petition for a limited
18 or plenary guardian or upon application of the guardian;
19 and

20 (2) the court finds by clear and convincing evidence
21 after an evidentiary hearing that the individual lacks the
22 capacity to understand the nature, effect, duties, and
23 obligations of a decision to marry.

24 (a-20) An individual from whom the right to marry has been
25 removed may nonetheless marry:

26 (1) with the consent of the guardian, without the

1 necessity of court authorization; or

2 (2) upon petition by the individual or the
3 individual's guardian of the person or estate, the court
4 may direct a guardian of the person or estate to consent,
5 on behalf of the individual, to the individual's marriage.
6 The court shall direct the guardian to consent to the
7 marriage unless, considering the expressed preferences of
8 the individual, the court finds by clear and convincing
9 evidence that the individual:

10 (A) currently lacks the capacity to understand the
11 nature, effect, duties, and obligations of marriage;
12 and

13 (B) entering into marriage is contrary to the
14 individual's best interests.

15 (a-25) Any marriage entered into by one or more
16 individuals from whom the right to marriage had been removed
17 at the time of the marriage is void unless:

18 (1) the guardian files a notice with the court
19 indicating that the guardian consents to the marriage;

20 (2) the right to marriage is restored to an individual
21 from whom it had been removed and the individual files a
22 notice with the court ratifying the decision to marry; or

23 (3) upon petition by the individual, the individual's
24 guardian of the person or estate, or the putative spouse,
25 the court enters an order ratifying the decision to marry.
26 The court shall ratify the decision to marry unless,

1 considering the expressed preferences of the individual,
2 the court finds by clear and convincing evidence that the
3 individual:

4 (A) currently lacks the capacity to understand the
5 nature, effect, duties, and obligations of marriage;
6 and

7 (B) entering into marriage is contrary to the
8 individual's best interests.

9 (a-30) A guardian may contest the validity of a marriage
10 under Sections 301 and 302 of the Illinois Marriage and
11 Dissolution of Marriage Act.

12 (a-35) The county clerk shall issue a license to marry
13 under subsection (a-25) by accepting the guardian's
14 application, appearance, and signature on behalf of the
15 individual under guardianship or upon presentation of a court
16 order authorizing and directing the guardian to consent to a
17 marriage.

18 ~~Upon petition by the guardian of the ward's person or~~
19 ~~estate, the court may authorize and direct a guardian of the~~
20 ~~ward's person or estate to consent, on behalf of the ward, to~~
21 ~~the ward's marriage pursuant to Part II of the Illinois~~
22 ~~Marriage and Dissolution of Marriage Act if the court finds by~~
23 ~~clear and convincing evidence that the marriage is in the~~
24 ~~ward's best interests. In making its determination, the court~~
25 ~~shall consider the standards set forth in subsection (c) of~~
26 ~~this Section. Upon presentation of a court order authorizing~~

1 ~~and directing a guardian of the ward's person and estate to~~
2 ~~consent to the ward's marriage, the county clerk shall accept~~
3 ~~the guardian's application, appearance, and signature on~~
4 ~~behalf of the ward for purposes of issuing a license to marry~~
5 ~~under Section 203 of the Illinois Marriage and Dissolution of~~
6 ~~Marriage Act.~~

7 (b) If the court directs, the guardian of the person shall
8 file with the court at intervals indicated by the court, a
9 report that shall state briefly: (1) the current mental,
10 physical, and social condition of the ward and the ward's
11 minor and adult dependent children; (2) their present living
12 arrangement, and a description and the address of every
13 residence where they lived during the reporting period and the
14 length of stay at each place; (3) a summary of the medical,
15 educational, vocational, and other professional services given
16 to them; (4) a resume of the guardian's visits with and
17 activities on behalf of the ward and the ward's minor and adult
18 dependent children; (5) a recommendation as to the need for
19 continued guardianship; (6) any other information requested by
20 the court or useful in the opinion of the guardian. The Office
21 of the State Guardian shall assist the guardian in filing the
22 report when requested by the guardian. The court may take such
23 action as it deems appropriate pursuant to the report.

24 (c) Absent court order pursuant to the Illinois Power of
25 Attorney Act directing a guardian to exercise powers of the
26 principal under an agency that survives disability, the

1 guardian has no power, duty, or liability with respect to any
2 personal or health care matters covered by the agency. This
3 subsection (c) applies to all agencies, whenever and wherever
4 executed.

5 (d) A guardian acting as a surrogate decision maker under
6 the Health Care Surrogate Act shall have all the rights of a
7 surrogate under that Act without court order including the
8 right to make medical treatment decisions such as decisions to
9 forgo or withdraw life-sustaining treatment. Any decisions by
10 the guardian to forgo or withdraw life-sustaining treatment
11 that are not authorized under the Health Care Surrogate Act
12 shall require a court order. Nothing in this Section shall
13 prevent an agent acting under a power of attorney for health
14 care from exercising his or her authority under the Illinois
15 Power of Attorney Act without further court order, unless a
16 court has acted under Section 2-10 of the Illinois Power of
17 Attorney Act. If a guardian is also a health care agent for the
18 ward under a valid power of attorney for health care, the
19 guardian acting as agent may execute his or her authority
20 under that act without further court order.

21 (e) Decisions made by a guardian on behalf of a ward shall
22 be made in accordance with the following standards for
23 decision making. The guardian shall consider the ward's
24 current preferences to the extent the ward has the ability to
25 participate in decision making when those preferences are
26 known or reasonably ascertainable by the guardian. Decisions

1 by the guardian shall conform to the ward's current
2 preferences: (1) unless the guardian reasonably believes that
3 doing so would result in substantial harm to the ward's
4 welfare or personal or financial interests; and (2) so long as
5 such decisions give substantial weight to what the ward, if
6 competent, would have done or intended under the
7 circumstances, taking into account evidence that includes, but
8 is not limited to, the ward's personal, philosophical,
9 religious and moral beliefs, and ethical values relative to
10 the decision to be made by the guardian. Where possible, the
11 guardian shall determine how the ward would have made a
12 decision based on the ward's previously expressed preferences,
13 and make decisions in accordance with the preferences of the
14 ward. If the ward's wishes are unknown and remain unknown
15 after reasonable efforts to discern them, or if the guardian
16 reasonably believes that a decision made in conformity with
17 the ward's preferences would result in substantial harm to the
18 ward's welfare or personal or financial interests, the
19 decision shall be made on the basis of the ward's best
20 interests as determined by the guardian. In determining the
21 ward's best interests, the guardian shall weigh the reason for
22 and nature of the proposed action, the benefit or necessity of
23 the action, the possible risks and other consequences of the
24 proposed action, and any available alternatives and their
25 risks, consequences and benefits, and shall take into account
26 any other information, including the views of family and

1 friends, that the guardian believes the ward would have
2 considered if able to act for herself or himself.

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

15 (g) (1) Unless there is a court order to the contrary, the
16 guardian, consistent with the standards set forth in
17 subsection (e) of this Section, shall use reasonable efforts
18 to notify the ward's known adult children, who have requested
19 notification and provided contact information, of the ward's
20 admission to a hospital, hospice, or palliative care program,
21 the ward's death, and the arrangements for the disposition of
22 the ward's remains.

23 (2) If a guardian unreasonably prevents an adult child,
24 spouse, adult grandchild, parent, or adult sibling of the ward
25 from visiting the ward, the court, upon a verified petition,
26 may order the guardian to permit visitation between the ward

1 and the adult child, spouse, adult grandchild, parent, or
2 adult sibling. In making its determination, the court shall
3 consider the standards set forth in subsection (e) of this
4 Section. The court shall not allow visitation if the court
5 finds that the ward has capacity to evaluate and communicate
6 decisions regarding visitation and expresses a desire not to
7 have visitation with the petitioner. This subsection (g) does
8 not apply to duly appointed public guardians or the Office of
9 State Guardian.

10 (Source: P.A. 101-329, eff. 8-9-19; 102-72, eff. 1-1-22;
11 102-258, eff. 8-6-21; 102-813, eff. 5-13-22.)