



Sen. Rachelle Crowe

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10200SB0732sam001

LRB102 04558 LNS 25436 a

1 AMENDMENT TO SENATE BILL 732

2 AMENDMENT NO. _____. Amend Senate Bill 732 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Probate Act of 1975 is amended by changing
5 Sections 1-2.19 and 11a-17.1 and by adding Section 1-2.25 as
6 follows:

7 (755 ILCS 5/1-2.19) (from Ch. 110 1/2, par. 1-2.19)

8 Sec. 1-2.19. Words importing the masculine, feminine, or
9 neuter gender include each of the other genders where
10 applicable.

11 (Source: P.A. 81-213.)

12 (755 ILCS 5/1-2.25 new)

13 Sec. 1-2.25. Fertile. "Fertile" means a person who is able
14 to impregnate a person or be impregnated by another person
15 without assisted reproduction.

1 (755 ILCS 5/11a-17.1)

2 Sec. 11a-17.1. Sterilization of ward.

3 (a) A guardian of the person shall not consent to the
4 sterilization of the ward without first obtaining an order
5 from the court granting the guardian the authority to provide
6 consent. For purposes of this Article XIa, "sterilization"
7 means any procedure that has as its purpose rendering the ward
8 permanently incapable of reproduction; provided, however, that
9 an order from the court is not required for a procedure that is
10 medically necessary to preserve the life of the ward or to
11 prevent serious impairment to the health of the ward and which
12 may result in sterilization.

13 (b) A guardian seeking authority to consent to the
14 sterilization of the ward shall seek such authority by filing
15 a verified motion. The verified motion shall allege facts
16 which demonstrate that the proposed sterilization is warranted
17 under subsection (f), (g) or (h) of this Section. The guardian
18 ad litem will notify the ward of the motion in the manner set
19 forth in subsection (c) of this Section.

20 (c) Upon the filing of a verified motion for authority to
21 consent to sterilization, the court shall appoint a guardian
22 ad litem to report to the court consistent with the provisions
23 of this Section. If the guardian ad litem is not a licensed
24 attorney, he or she shall be qualified, by training or
25 experience, to work with or advocate for persons with a

1 developmental disability, mental illness, physical disability,
2 or disability because of mental deterioration, depending on
3 the type of disability of the ward that is alleged in the
4 motion. The court may allow the guardian ad litem reasonable
5 compensation. The guardian ad litem may consult with a person
6 who by training or experience is qualified to work with
7 persons with a developmental disability, mental illness,
8 physical disability, or disability because of mental
9 deterioration, depending on the type of disability of the ward
10 that is alleged. The guardian ad litem may also consult with
11 health care providers knowledgeable about reproductive health
12 matters including sterilization, other forms of contraception,
13 and childbirth. Outside the presence of the guardian, the
14 guardian ad litem shall personally observe the ward prior to
15 the hearing and shall inform the ward orally and in writing of
16 the contents of the verified motion for authority to consent
17 to sterilization. Outside the presence of the guardian, the
18 guardian ad litem shall also attempt to elicit the ward's
19 position concerning the motion, and any other areas of inquiry
20 deemed appropriate by the court. At or before the hearing, the
21 guardian ad litem shall file a written report detailing his or
22 her observations of the ward; the responses of the ward to any
23 of the inquiries detailed in this Section; the opinion of the
24 guardian ad litem and any other professionals with whom the
25 guardian ad litem consulted concerning the ward's
26 understanding of and desire for or objection to, as well as

1 what is in the ward's best interest relative to,
2 sterilization, other forms of contraception, and childbirth;
3 and any other material issue discovered by the guardian ad
4 litem. The guardian ad litem shall appear at the hearing and
5 testify, and may present witnesses, as to any issues presented
6 in his or her report.

7 (d) The court shall ~~(1) may~~ appoint counsel for the ward ~~if~~
8 ~~the court finds that the interests of the ward will be best~~
9 ~~served by the appointment, and (2) shall appoint counsel upon~~
10 ~~the ward's request, if the ward is objecting to the proposed~~
11 ~~sterilization, or if the ward takes a position adverse to that~~
12 ~~of the guardian ad litem. The ward shall be permitted to obtain~~
13 ~~the appointment of counsel either at the hearing or by any~~
14 ~~written or oral request communicated to the court prior to the~~
15 ~~hearing. The court shall inform the ward of this right to~~
16 ~~obtain appointed counsel.~~ The court may allow counsel for the
17 ward reasonable compensation.

18 (e) The court shall order a medical and psychological
19 evaluation of the ward. The evaluation shall address the
20 ward's decision making capacity with respect to the proposed
21 sterilization, the existence of any less permanent
22 alternatives, and any other material issue.

23 (f) The court shall determine, as a threshold inquiry,
24 whether the ward has capacity to consent or withhold consent
25 to the proposed sterilization and, if the ward lacks such
26 capacity, whether the ward is likely to regain such capacity.

1 The ward shall not be deemed to lack such capacity solely on
2 the basis of the adjudication of disability and appointment of
3 a guardian. In determining capacity, the court shall consider
4 whether the ward is able, after being provided appropriate
5 information, to understand the relationship between sexual
6 activity and reproduction; the consequences of reproduction;
7 and the nature and consequences of the proposed sterilization
8 procedure. If the court finds that (1) the ward has capacity to
9 consent or withhold consent to the proposed sterilization, and
10 (2) the ward objects or consents to the procedure, the court
11 shall enter an order consistent with the ward's objection or
12 consent and the proceedings on the verified motion shall be
13 terminated.

14 (g) If the court finds that the ward does not have capacity
15 to consent or withhold consent to the proposed sterilization
16 and is unlikely to regain such capacity, the court shall
17 determine whether the ward is expressing a clear desire for
18 the proposed sterilization. If the ward is expressing a clear
19 desire for the proposed sterilization, the court's decision
20 regarding the proposed sterilization shall be made in
21 accordance with the standards set forth in subsection (e) of
22 Section 11a-17 of this Act.

23 (h) If the court finds that the ward does not have capacity
24 to consent or withhold consent to the proposed sterilization
25 and is unlikely to regain such capacity, and that the ward is
26 not expressing a clear desire for the proposed sterilization,

1 the court shall consider the standards set forth in subsection
2 (e) of Section 11a-17 of this Act and enter written findings of
3 fact and conclusions of law addressing those standards. The
4 sex of the ward shall not be a motivating factor in the court's
5 decision. In addition, the court shall not authorize the
6 guardian to consent to the proposed sterilization unless the
7 court finds, by ~~clear and convincing~~ evidence beyond a
8 reasonable doubt and based on written findings of fact and
9 conclusions of law, that all of the following factors are
10 present:

11 (1) The ward lacks decisional capacity regarding the
12 proposed sterilization.

13 (2) The ward is fertile and capable of procreation.

14 (3) The benefits to the ward of the proposed
15 sterilization outweigh the harm.

16 (4) The court has considered less intrusive
17 alternatives and found them to be inadequate in this case.

18 (5) The proposed sterilization is in the best interest
19 of the ward. In considering the ward's best interest, the
20 court shall consider the following factors:

21 (A) The possibility that the ward will experience
22 trauma or psychological damage if he or she has a child
23 and, conversely, the possibility of trauma or
24 psychological damage from the proposed sterilization.

25 (B) The ward is or is likely to become sexually
26 active.

1 (C) The inability of the ward to understand
2 reproduction or contraception and the likely
3 permanence of that inability.

4 (D) Any other factors that assist the court in
5 determining the best interest of the ward relative to
6 the proposed sterilization.

7 (Source: P.A. 96-272, eff. 1-1-10.)".