



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4963

Introduced 2/7/2024, by Rep. Maurice A. West, II

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-9
755 ILCS 5/11a-18

from Ch. 110 1/2, par. 11a-9
from Ch. 110 1/2, par. 11a-18

Amends the Guardians for Adults with Disabilities Article of the Probate Act of 1975. Provides that the required report that is attached to a petition for adjudication of disability and for appointment of a guardian may contain a psychological evaluation that assesses the cognitive, emotional, and functional capacities of the respondent and that has been performed by a licensed clinical psychologist under the Clinical Psychologist Licensing Act within 3 months of the date of the filing of the petition or within one year of the date of the filing of the petition in the case of an individual with an intellectual disability. Provides that the court may enter an order authorizing the ward to execute a will or codicil upon the request of the ward that is accompanied by a report that states the ward possesses testamentary capacity from a current physician or a licensed clinical psychologist. Effective immediately.

LRB103 38156 JRC 68289 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-9 and 11a-18 as follows:

6 (755 ILCS 5/11a-9) (from Ch. 110 1/2, par. 11a-9)
7 Sec. 11a-9. Report.

8 (a) The petition for adjudication of disability and for
9 appointment of a guardian should be accompanied by a report
10 which contains (1) a description of the nature and type of the
11 respondent's disability and an assessment of how the
12 disability impacts on the ability of the respondent to make
13 decisions or to function independently; (2) an analysis and
14 results of evaluations of the respondent's mental and physical
15 condition and, where appropriate, educational condition,
16 adaptive behavior and social skills, which have been performed
17 within 3 months of the date of the filing of the petition, or,
18 in the case of an intellectual disability, a psychological
19 evaluation of the respondent that has been performed by a
20 clinical psychologist licensed under the Clinical Psychologist
21 Licensing Act, within one year of the date of the filing of the
22 petition, or a psychological evaluation that assesses the
23 cognitive, emotional, and functional capacities of the

1 respondent and that has been performed by a licensed clinical
2 psychologist under the Clinical Psychologist Licensing Act
3 within 3 months of the date of the filing of the petition or
4 within one year of the date of the filing of the petition in
5 the case of an individual with an intellectual disability; (3)
6 an opinion as to whether guardianship is needed, the type and
7 scope of the guardianship needed, and the reasons therefor;
8 (4) a recommendation as to the most suitable living
9 arrangement and, where appropriate, treatment or habilitation
10 plan for the respondent and the reasons therefor; (5) the
11 name, business address, business telephone number, and
12 signatures of all persons who performed the evaluations upon
13 which the report is based, one of whom shall be a licensed
14 physician or a licensed clinical psychologist under the
15 Clinical Psychologist Licensing Act, or may, in the case of an
16 intellectual disability, be a clinical psychologist licensed
17 under the Clinical Psychologist Licensing Act, and a statement
18 of the certification, license, or other credentials that
19 qualify the evaluators who prepared the report.

20 (b) If for any reason no report accompanies the petition,
21 the court shall order appropriate evaluations to be performed
22 by a qualified person or persons and a report prepared and
23 filed with the court at least 10 days prior to the hearing.

24 (b-5) Upon oral or written motion by the respondent or the
25 guardian ad litem or upon the court's own motion, the court
26 shall appoint one or more independent experts to examine the

1 respondent. Upon the filing with the court of a verified
2 statement of services rendered by the expert or experts, the
3 court shall determine a reasonable fee for the services
4 performed. If the respondent is unable to pay the fee, the
5 court may enter an order upon the petitioner to pay the entire
6 fee or such amount as the respondent is unable to pay. However,
7 in cases where the Office of State Guardian is the petitioner,
8 consistent with Section 30 of the Guardianship and Advocacy
9 Act, no expert services fees shall be assessed against the
10 Office of the State Guardian.

11 (c) Unless the court otherwise directs, any report
12 prepared pursuant to this Section shall not be made part of the
13 public record of the proceedings but shall be available to the
14 court or an appellate court in which the proceedings are
15 subject to review, to the respondent, the petitioner, the
16 guardian, and their attorneys, to the respondent's guardian ad
17 litem, and to such other persons as the court may direct.

18 Accessibility to a report prepared pursuant to this
19 Section shall be in accordance with Section 5 of the Court
20 Record and Document Accessibility Act.

21 (Source: P.A. 102-109, eff. 1-1-22; 103-166, eff. 1-1-24.)

22 (755 ILCS 5/11a-18) (from Ch. 110 1/2, par. 11a-18)

23 Sec. 11a-18. Duties of the estate guardian.

24 (a) To the extent specified in the order establishing the
25 guardianship, the guardian of the estate shall have the care,

1 management and investment of the estate, shall manage the
2 estate frugally and shall apply the income and principal of
3 the estate so far as necessary for the comfort and suitable
4 support and education of the ward, his minor and adult
5 dependent children, and persons related by blood or marriage
6 who are dependent upon or entitled to support from him, or for
7 any other purpose which the court deems to be for the best
8 interests of the ward, and the court may approve the making on
9 behalf of the ward of such agreements as the court determines
10 to be for the ward's best interests. The guardian may make
11 disbursement of his ward's funds and estate directly to the
12 ward or other distributee or in such other manner and in such
13 amounts as the court directs. If the estate of a ward is
14 derived in whole or in part from payments of compensation,
15 adjusted compensation, pension, insurance or other similar
16 benefits made directly to the estate by the Veterans
17 Administration, notice of the application for leave to invest
18 or expend the ward's funds or estate, together with a copy of
19 the petition and proposed order, shall be given to the
20 Veterans' Administration Regional Office in this State at
21 least 7 days before the hearing on the application.

22 (a-5) The probate court, upon petition of a guardian,
23 other than the guardian of a minor, and after notice to all
24 other persons interested as the court directs, may authorize
25 the guardian to exercise any or all powers over the estate and
26 business affairs of the ward that the ward could exercise if

1 present and not under disability. The court may authorize the
2 taking of an action or the application of funds not required
3 for the ward's current and future maintenance and support in
4 any manner approved by the court as being in keeping with the
5 ward's wishes so far as they can be ascertained. The court must
6 consider the permanence of the ward's disabling condition and
7 the natural objects of the ward's bounty. In ascertaining and
8 carrying out the ward's wishes the court may consider, but
9 shall not be limited to, minimization of State or federal
10 income, estate, or inheritance taxes; and providing gifts to
11 charities, relatives, and friends that would be likely
12 recipients of donations from the ward. The ward's wishes as
13 best they can be ascertained shall be carried out, whether or
14 not tax savings are involved. Actions or applications of funds
15 may include, but shall not be limited to, the following:

16 (1) making gifts of income or principal, or both, of
17 the estate, either outright or in trust;

18 (2) conveying, releasing, or disclaiming his or her
19 contingent and expectant interests in property, including
20 marital property rights and any right of survivorship
21 incident to joint tenancy or tenancy by the entirety;

22 (3) releasing or disclaiming his or her powers as
23 trustee, personal representative, custodian for minors, or
24 guardian;

25 (4) exercising, releasing, or disclaiming his or her
26 powers as donee of a power of appointment;

1 (5) entering into contracts;

2 (6) creating for the benefit of the ward or others,
3 revocable or irrevocable trusts of his or her property
4 that may extend beyond his or her disability or life;

5 (7) exercising options of the ward to purchase or
6 exchange securities or other property;

7 (8) exercising the rights of the ward to elect benefit
8 or payment options, to terminate, to change beneficiaries
9 or ownership, to assign rights, to borrow, or to receive
10 cash value in return for a surrender of rights under any
11 one or more of the following:

12 (i) life insurance policies, plans, or benefits,

13 (ii) annuity policies, plans, or benefits,

14 (iii) mutual fund and other dividend investment
15 plans,

16 (iv) retirement, profit sharing, and employee
17 welfare plans and benefits;

18 (9) exercising his or her right to claim or disclaim
19 an elective share in the estate of his or her deceased
20 spouse and to renounce any interest by testate or
21 intestate succession or by inter vivos transfer;

22 (10) changing the ward's residence or domicile; or

23 (11) modifying by means of codicil or trust amendment
24 the terms of the ward's will or any revocable trust
25 created by the ward, as the court may consider advisable
26 in light of changes in applicable tax laws.

1 The guardian in his or her petition shall briefly outline
2 the action or application of funds for which he or she seeks
3 approval, the results expected to be accomplished thereby, and
4 the tax savings, if any, expected to accrue. The proposed
5 action or application of funds may include gifts of the ward's
6 personal property or real estate, but transfers of real estate
7 shall be subject to the requirements of Section 20 of this Act.
8 Gifts may be for the benefit of prospective legatees,
9 devisees, or heirs apparent of the ward or may be made to
10 individuals or charities in which the ward is believed to have
11 an interest. The guardian shall also indicate in the petition
12 that any planned disposition is consistent with the intentions
13 of the ward insofar as they can be ascertained, and if the
14 ward's intentions cannot be ascertained, the ward will be
15 presumed to favor reduction in the incidents of various forms
16 of taxation and the partial distribution of his or her estate
17 as provided in this subsection. The guardian shall not,
18 however, be required to include as a beneficiary or fiduciary
19 any person who he has reason to believe would be excluded by
20 the ward. A guardian shall be required to investigate and
21 pursue a ward's eligibility for governmental benefits.

22 (a-6) The guardian may, without an order of court, open,
23 maintain, and transfer funds to an ABLE account on behalf of
24 the ward and the ward's minor and adult dependent children as
25 specified under Section 16.6 of the State Treasurer Act.

26 (b) Upon the direction of the court which issued his

1 letters, a guardian may perform the contracts of his ward
2 which were legally subsisting at the time of the commencement
3 of the ward's disability. The court may authorize the guardian
4 to execute and deliver any bill of sale, deed or other
5 instrument.

6 (c) The guardian of the estate of a ward shall appear for
7 and represent the ward in all legal proceedings unless another
8 person is appointed for that purpose as guardian or next
9 friend. This does not impair the power of any court to appoint
10 a guardian ad litem or next friend to defend the interests of
11 the ward in that court, or to appoint or allow any person as
12 the next friend of a ward to commence, prosecute or defend any
13 proceeding in his behalf. Without impairing the power of the
14 court in any respect, if the guardian of the estate of a ward
15 and another person as next friend shall appear for and
16 represent the ward in a legal proceeding in which the
17 compensation of the attorney or attorneys representing the
18 guardian and next friend is solely determined under a
19 contingent fee arrangement, the guardian of the estate of the
20 ward shall not participate in or have any duty to review the
21 prosecution of the action, to participate in or review the
22 appropriateness of any settlement of the action, or to
23 participate in or review any determination of the
24 appropriateness of any fees awarded to the attorney or
25 attorneys employed in the prosecution of the action.

26 (d) Adjudication of disability shall not revoke or

1 otherwise terminate a trust which is revocable by the ward. A
2 guardian of the estate shall have no authority to revoke a
3 trust that is revocable by the ward, except that the court may
4 authorize a guardian to revoke a Totten trust or similar
5 deposit or withdrawable capital account in trust to the extent
6 necessary to provide funds for the purposes specified in
7 paragraph (a) of this Section. If the trustee of any trust for
8 the benefit of the ward has discretionary power to apply
9 income or principal for the ward's benefit, the trustee shall
10 not be required to distribute any of the income or principal to
11 the guardian of the ward's estate, but the guardian may bring
12 an action on behalf of the ward to compel the trustee to
13 exercise the trustee's discretion or to seek relief from an
14 abuse of discretion. This paragraph shall not limit the right
15 of a guardian of the estate to receive accountings from the
16 trustee on behalf of the ward.

17 (d-5) Upon a verified petition by the plenary or limited
18 guardian of the estate or the request of the ward that is
19 accompanied by a current physician's or a licensed clinical
20 psychologist's report that states the ward possesses
21 testamentary capacity, the court may enter an order
22 authorizing the ward to execute a will or codicil. In so
23 ordering, the court shall authorize the guardian to retain
24 independent counsel for the ward with whom the ward may
25 execute or modify a will or codicil.

26 (e) Absent court order pursuant to the Illinois Power of

1 Attorney Act directing a guardian to exercise powers of the
2 principal under an agency that survives disability, the
3 guardian will have no power, duty or liability with respect to
4 any property subject to the agency. This subsection (e)
5 applies to all agencies, whenever and wherever executed.

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

18 (Source: P.A. 101-329, eff. 8-9-19; 102-72, eff. 1-1-22.)

19 Section 99. Effective date. This Act takes effect upon
20 becoming law.