



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 02/09/04, by Patricia Reid Lindner - Tom Cross

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11-5

from Ch. 110 1/2, par. 11-5

Amends the Probate Act of 1975. Provides that the court shall not appoint as guardian of the person of a minor any person whom the court has determined had neglected or substantially contributed to the minor becoming a neglected or abused minor, unless 5 years (instead of 2 years) have elapsed since the last proven incident of abuse or neglect.

LRB093 19383 LCB 45121 b

1 AN ACT concerning estates.

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 11-5 as follows:

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

7 Sec. 11-5. Appointment of guardian.

8 (a) Upon the filing of a petition for the appointment of a
9 guardian or on its own motion, the court may appoint a guardian
10 of the estate or of both the person and estate, of a minor, or
11 may appoint a guardian of the person only of a minor or minors,
12 as the court finds to be in the best interest of the minor or
13 minors.

14 (a-1) A parent, adoptive parent or adjudicated parent,
15 whose parental rights have not been terminated, may designate
16 in any writing, including a will, a person qualified to act
17 under Section 11-3 to be appointed as guardian of the person or
18 estate, or both, of an unmarried minor or of a child likely to
19 be born. A parent, adoptive parent or adjudicated parent, whose
20 parental rights have not been terminated, or a guardian or a
21 standby guardian of an unmarried minor or of a child likely to
22 be born may designate in any writing, including a will, a
23 person qualified to act under Section 11-3 to be appointed as
24 successor guardian of the minor's person or estate, or both.
25 The designation must be witnessed by 2 or more credible
26 witnesses at least 18 years of age, neither of whom is the
27 person designated as the guardian. The designation may be
28 proved by any competent evidence. If the designation is
29 executed and attested in the same manner as a will, it shall
30 have prima facie validity. The designation of a guardian or
31 successor guardian does not affect the rights of the other
32 parent in the minor.

1 (b) The court lacks jurisdiction to proceed on a petition
2 for the appointment of a guardian of a minor if (i) the minor
3 has a living parent, adoptive parent or adjudicated parent,
4 whose parental rights have not been terminated, whose
5 whereabouts are known, and who is willing and able to make and
6 carry out day-to-day child care decisions concerning the minor,
7 unless the parent or parents consent to the appointment or,
8 after receiving notice of the hearing under Section 11-10.1,
9 fail to object to the appointment at the hearing on the
10 petition or (ii) there is a guardian for the minor appointed by
11 a court of competent jurisdiction. There shall be a rebuttable
12 presumption that a parent of a minor is willing and able to
13 make and carry out day-to-day child care decisions concerning
14 the minor, but the presumption may be rebutted by a
15 preponderance of the evidence.

16 (b-1) If the court finds the appointment of a guardian of
17 the minor to be in the best interest of the minor, and if a
18 standby guardian has previously been appointed for the minor
19 under Section 11-5.3, the court shall appoint the standby
20 guardian as the guardian of the person or estate, or both, of
21 the minor unless the court finds, upon good cause shown, that
22 the appointment would no longer be in the best interest of the
23 minor.

24 (c) If the minor is 14 years of age or more, the minor may
25 nominate the guardian of the minor's person and estate, subject
26 to approval of the court. If the minor's nominee is not
27 approved by the court or if, after notice to the minor, the
28 minor fails to nominate a guardian of the minor's person or
29 estate, the court may appoint the guardian without nomination.

30 (d) The court shall not appoint as guardian of the person
31 of the minor any person whom the court has determined had
32 caused or substantially contributed to the minor becoming a
33 neglected or abused minor as defined in the Juvenile Court Act
34 of 1987 unless 5 ~~2~~ years have elapsed since the last proven
35 incident of abuse or neglect and the court determines that
36 appointment of such person as guardian is in the best interests

1 of the minor.

2 (e) Previous statements made by the minor relating to any
3 allegations that the minor is an abused or neglected child
4 within the meaning of the Abused and Neglected Child Reporting
5 Act, or an abused or neglected minor within the meaning of the
6 Juvenile Court Act of 1987, shall be admissible in evidence in
7 a hearing concerning appointment of a guardian of the person or
8 estate of the minor. No such statement, however, if
9 uncorroborated and not subject to cross-examination, shall be
10 sufficient in itself to support a finding of abuse or neglect.
11 (Source: P.A. 90-430, eff. 8-16-97; 90-472, eff. 8-17-97;
12 90-796, eff. 12-15-98.)