

SB1340



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1340

Introduced 2/5/2013, by Sen. John G. Mulroe

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-10

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

Amends the Probate Act of 1975. Provides that no guardian ad litem or legal fees shall be assessed against the Department of Children and Family Services in cases where the Department is the petitioner under certain provisions of the Juvenile Court Act of 1987. Effective immediately.

LRB098 02581 HEP 32586 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.
14 Notwithstanding any provision in the Mental Health and
15 Developmental Disabilities Confidentiality Act or any other
16 law, a guardian ad litem shall have the right to inspect and
17 copy any medical or mental health record of the respondent
18 which the guardian ad litem deems necessary, provided that the
19 information so disclosed shall not be utilized for any other
20 purpose nor be redisclosed except in connection with the
21 proceedings. At or before the hearing, the guardian ad litem
22 shall file a written report detailing his or her observations
23 of the respondent, the responses of the respondent to any of
24 the inquires detailed in this Section, the opinion of the
25 guardian ad litem or other professionals with whom the guardian
26 ad litem consulted concerning the appropriateness of

1 guardianship, and any other material issue discovered by the
2 guardian ad litem. The guardian ad litem shall appear at the
3 hearing and testify as to any issues presented in his or her
4 report.

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

15 (c) If the respondent is unable to pay the fee of the
16 guardian ad litem or appointed counsel, or both, the court may
17 enter an order for the petitioner to pay all such fees or such
18 amounts as the respondent or the respondent's estate may be
19 unable to pay. However, in cases where the Office of State
20 Guardian is the petitioner, consistent with Section 30 of the
21 Guardianship and Advocacy Act, where the public guardian is the
22 petitioner, consistent with Section 13-5 of the Probate Act of
23 1975, where an elder abuse provider agency is the petitioner,
24 pursuant to Section 9 of the Elder Abuse and Neglect Act, ~~or~~
25 where the Department of Human Services Office of Inspector
26 General is the petitioner, consistent with Section 45 of the

1 Abuse of Adults with Disabilities Intervention Act, or where
2 the Department of Children and Family Services is the
3 petitioner under subparagraph (d) of subsection (1) of Section
4 2-27 of the Juvenile Court Act of 1987, no guardian ad litem or
5 legal fees shall be assessed against the Office of State
6 Guardian, the public guardian, the elder abuse provider agency,
7 ~~or~~ the Department of Human Services Office of Inspector
8 General, or the Department of Children and Family Services.

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

12 (e) Unless he is the petitioner, the respondent shall be
13 personally served with a copy of the petition and a summons not
14 less than 14 days before the hearing. The summons shall be
15 printed in large, bold type and shall include the following
16 notice:

17 NOTICE OF RIGHTS OF RESPONDENT

18 You have been named as a respondent in a guardianship
19 petition asking that you be declared a disabled person. If the
20 court grants the petition, a guardian will be appointed for
21 you. A copy of the guardianship petition is attached for your
22 convenience.

23 The date and time of the hearing are:

24 The place where the hearing will occur is:

25 The Judge's name and phone number is:

26 If a guardian is appointed for you, the guardian may be

1 given the right to make all important personal decisions for
2 you, such as where you may live, what medical treatment you may
3 receive, what places you may visit, and who may visit you. A
4 guardian may also be given the right to control and manage your
5 money and other property, including your home, if you own one.
6 You may lose the right to make these decisions for yourself.

7 You have the following legal rights:

8 (1) You have the right to be present at the court
9 hearing.

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

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

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

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

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

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

23 You do not have to attend the court hearing if you do not
24 want to be there. If you do not attend, the Judge may appoint a
25 guardian if the Judge finds that a guardian would be of benefit
26 to you. The hearing will not be postponed or canceled if you do

1 not attend.

2 IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO
3 NOT WANT A GUARDIAN OR IF YOU WANT SOMEONE OTHER THAN THE
4 PERSON NAMED IN THE GUARDIANSHIP PETITION TO BE YOUR GUARDIAN.
5 IF YOU DO NOT WANT A GUARDIAN OF IF YOU HAVE ANY OTHER
6 PROBLEMS, YOU SHOULD CONTACT AN ATTORNEY OR COME TO COURT AND
7 TELL THE JUDGE.

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

11 (f) Notice of the time and place of the hearing shall be
12 given by the petitioner by mail or in person to those persons,
13 including the proposed guardian, whose names and addresses
14 appear in the petition and who do not waive notice, not less
15 than 14 days before the hearing.

16 (Source: P.A. 96-1052, eff. 7-14-10; 97-375, eff. 8-15-11;
17 97-1095, eff. 8-24-12.)

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