

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Probate Act of 1975 is amended by adding Section 11a-17.1 as follows:

(755 ILCS 5/11a-17.1 new)

Sec. 11a-17.1. Sterilization of ward.

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

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

forth in subsection (c) of this Section.

(c) Upon the filing of a verified motion for authority to consent to sterilization, the court shall appoint a guardian ad litem to report to the court consistent with the provisions of this Section. If the guardian ad litem is not a licensed attorney, he or she shall be qualified, by training or experience, to work with or advocate for persons with a developmental disability, mental illness, physical disability, or disability because of mental deterioration, depending on the type of disability of the ward that is alleged in the motion. The court may allow the guardian ad litem reasonable compensation. The guardian ad litem may consult with a person who by training or experience is qualified to work with persons with a developmental disability, mental illness, physical disability, or disability because of mental deterioration, depending on the type of disability of the ward that is alleged. The guardian ad litem may also consult with health care providers knowledgeable about reproductive health matters including sterilization, other forms of contraception, and childbirth. Outside the presence of the guardian, the guardian ad litem shall personally observe the ward prior to the hearing and shall inform the ward orally and in writing of the contents of the verified motion for authority to consent to sterilization. Outside the presence of the guardian, the guardian ad litem shall also attempt to elicit the ward's position concerning the motion, and any other areas of inquiry

deemed appropriate by the court. At or before the hearing, the guardian ad litem shall file a written report detailing his or her observations of the ward; the responses of the ward to any of the inquiries detailed in this Section; the opinion of the guardian ad litem and any other professionals with whom the guardian ad litem consulted concerning the ward's understanding of and desire for or objection to, as well as what is in the ward's best interest relative to, sterilization, other forms of contraception, and childbirth; and any other material issue discovered by the guardian ad litem. The guardian ad litem shall appear at the hearing and testify, and may present witnesses, as to any issues presented in his or her report.

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

(e) The court shall order a medical and psychological evaluation of the ward. The evaluation shall address the ward's

decision making capacity with respect to the proposed sterilization, the existence of any less permanent alternatives, and any other material issue.

(f) The court shall determine, as a threshold inquiry, whether the ward has capacity to consent or withhold consent to the proposed sterilization and, if the ward lacks such capacity, whether the ward is likely to regain such capacity. The ward shall not be deemed to lack such capacity solely on the basis of the adjudication of disability and appointment of a guardian. In determining capacity, the court shall consider whether the ward is able, after being provided appropriate information, to understand the relationship between sexual activity and reproduction; the consequences of reproduction; and the nature and consequences of the proposed sterilization procedure. If the court finds that (1) the ward has capacity to consent or withhold consent to the proposed sterilization, and (2) the ward objects or consents to the procedure, the court shall enter an order consistent with the ward's objection or consent and the proceedings on the verified motion shall be terminated.

(g) If the court finds that the ward does not have capacity to consent or withhold consent to the proposed sterilization and is unlikely to regain such capacity, the court shall determine whether the ward is expressing a clear desire for the proposed sterilization. If the ward is expressing a clear desire for the proposed sterilization, the court's decision

regarding the proposed sterilization shall be made in accordance with the standards set forth in subsection (e) of Section 11a-17 of this Act.

(h) If the court finds that the ward does not have capacity to consent or withhold consent to the proposed sterilization and is unlikely to regain such capacity, and that the ward is not expressing a clear desire for the proposed sterilization, the court shall consider the standards set forth in subsection (e) of Section 11a-17 of this Act and enter written findings of fact and conclusions of law addressing those standards. In addition, the court shall not authorize the guardian to consent to the proposed sterilization unless the court finds, by clear and convincing evidence and based on written findings of fact and conclusions of law, that all of the following factors are present:

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

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

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

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

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

(A) The possibility that the ward will experience

trauma or psychological damage if he or she has a child and, conversely, the possibility of trauma or psychological damage from the proposed sterilization.

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

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

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