

**HB2892**



**104TH GENERAL ASSEMBLY**

**State of Illinois**

**2025 and 2026**

**HB2892**

Introduced 2/6/2025, by Rep. Terra Costa Howard

**SYNOPSIS AS INTRODUCED:**

755 ILCS 5/11a-10

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

Amends the Probate Act of 1975. Authorizes a petitioner, cross-petitioner, or respondent to request a one-time substitution of a guardian ad litem that must be granted if the motion to do so was made at any time before the guardian ad litem files an appearance or at the first court appearance, whichever is later.

LRB104 10289 JRC 20363 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  
15          not necessary for the protection of the respondent or a  
16          reasonably informed decision on the petition. If the guardian  
17          ad litem is not a licensed attorney, he or she shall be  
18          qualified, by training or experience, to work with or advocate  
19          for persons with developmental disabilities, the mentally ill,  
20          persons with physical disabilities, the elderly, or persons  
21          with a disability due to mental deterioration, depending on  
22          the type of disability that is alleged in the petition. The  
23          petitioner, cross-petitioner, or respondent is entitled to one

1       substitution of guardian ad litem without cause as a matter of  
2       right. An application for substitution of guardian ad litem  
3       may be made by oral or written motion and must be granted if  
4       the motion is made at any time before the guardian ad litem  
5       files an appearance or at the first court appearance after the  
6       guardian ad litem is appointed, whichever is later. The court  
7       may allow the guardian ad litem reasonable compensation. The  
8       guardian ad litem may consult with a person who by training or  
9       experience is qualified to work with persons with a  
10      developmental disability, persons with mental illness, persons  
11      with physical disabilities, or persons with a disability due  
12      to mental deterioration, depending on the type of disability  
13      that is alleged. The guardian ad litem shall personally  
14      observe the respondent prior to the hearing and shall inform  
15      him orally and in writing of the contents of the petition and  
16      of his rights, including providing a copy of the notice of  
17      rights required under subsection (e). The guardian ad litem  
18      shall also attempt to elicit the respondent's position  
19      concerning the adjudication of disability, the proposed  
20      guardian, a proposed change in residential placement, changes  
21      in care that might result from the guardianship, and other  
22      areas of inquiry deemed appropriate by the court.  
23      Notwithstanding any provision in the Mental Health and  
24      Developmental Disabilities Confidentiality Act or any other  
25      law, a guardian ad litem shall have the right to inspect and  
26      copy any medical or mental health record of the respondent

1       which the guardian ad litem deems necessary, provided that the  
2       information so disclosed shall not be utilized for any other  
3       purpose nor be redislosed except in connection with the  
4       proceedings. At or before the hearing, the guardian ad litem  
5       shall file a written report detailing his or her observations  
6       of the respondent, the responses of the respondent to any of  
7       the inquiries detailed in this Section, the opinion of the  
8       guardian ad litem or other professionals with whom the  
9       guardian ad litem consulted concerning the appropriateness of  
10       guardianship, and any other material issue discovered by the  
11       guardian ad litem. The guardian ad litem shall appear at the  
12       hearing and testify as to any issues presented in his or her  
13       report.

14               (b) The court (1) may appoint counsel for the respondent,  
15       if the court finds that the interests of the respondent will be  
16       best served by the appointment, and (2) shall appoint counsel  
17       upon the respondent's request or if the respondent takes a  
18       position adverse to that of the guardian ad litem. The  
19       respondent shall be permitted to obtain the appointment of  
20       counsel either at the hearing or by any written or oral request  
21       communicated to the court prior to the hearing. The summons  
22       shall inform the respondent of this right to obtain appointed  
23       counsel. The court may allow counsel for the respondent  
24       reasonable compensation.

25               (c) The allocation of guardian ad litem fees and costs is  
26       within the discretion of the court. No legal fees, appointed

1 counsel fees, guardian ad litem fees, or costs shall be  
2 assessed against the Office of the State Guardian, the public  
3 guardian, an adult protective services agency, the Department  
4 of Children and Family Services, or the agency designated by  
5 the Governor under Section 1 of the Protection and Advocacy  
6 for Persons with Developmental Disabilities Act.

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

NOTICE OF RIGHTS OF RESPONDENT

15 You have been named as a respondent in a guardianship  
16 petition asking that you be declared a person with a  
17 disability. If the court grants the petition, a guardian will  
18 be appointed for you. A copy of the guardianship petition is  
19 attached for your convenience.

20 The date and time of the hearing are:

21 The place where the hearing will occur is:

22 The Judge's name and phone number is:

23           If a guardian is appointed for you, the guardian may be  
24        given the right to make all important personal decisions for  
25        you, such as where you may live, what medical treatment you may  
26        receive, what places you may visit, and who may visit you. A

1 guardian may also be given the right to control and manage your  
2 money and other property, including your home, if you own one.  
3 You may lose the right to make these decisions for yourself.

4 You have the following legal rights:

5 (1) You have the right to be present at the court  
6 hearing.

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

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

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

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

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

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

20 (8) You have the right to ask a judge to find that  
21 although you lack some capacity to make your own  
22 decisions, you can make other decisions, and therefore it  
23 is best for the court to appoint only a limited guardian  
24 for you.

25 You do not have to attend the court hearing if you do not  
26 want to be there. If you do not attend, the Judge may appoint a

1 guardian if the Judge finds that a guardian would be of benefit  
2 to you. The hearing will not be postponed or canceled if you do  
3 not attend. If you are unable to attend the hearing in person  
4 or you will suffer harm if you attend, the Judge can decide to  
5 hold the hearing at a place that is convenient. The Judge can  
6 also follow the rule of the Supreme Court of this State, or its  
7 local equivalent, and decide if a video conference is  
8 appropriate.

9 IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO  
10 NOT WANT A GUARDIAN OR IF YOU WANT SOMEONE OTHER THAN THE  
11 PERSON NAMED IN THE GUARDIANSHIP PETITION TO BE YOUR GUARDIAN.  
12 IF YOU DO NOT WANT A GUARDIAN OR IF YOU HAVE ANY OTHER  
13 PROBLEMS, YOU SHOULD CONTACT AN ATTORNEY OR COME TO COURT AND  
14 TELL THE JUDGE.

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

18 [END OF FORM]

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

24 (Source: P.A. 102-72, eff. 1-1-22; 102-191, eff. 1-1-22;  
25 102-813, eff. 5-13-22.)