

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 11-5, 11-7, and 11-14.1 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

1 successor guardian of the minor's person or estate, or both.  
2 The designation must be witnessed by 2 or more credible  
3 witnesses at least 18 years of age, neither of whom is the  
4 person designated as the guardian. The designation may be  
5 proved by any competent evidence. If the designation is  
6 executed and attested in the same manner as a will, it shall  
7 have prima facie validity. The designation of a guardian or  
8 successor guardian does not affect the rights of the other  
9 parent in the minor.

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

25 (b-1) If the court finds the appointment of a guardian of  
26 the minor to be in the best interest of the minor, and if a

1 standby guardian has previously been appointed for the minor  
2 under Section 11-5.3, the court shall appoint the standby  
3 guardian as the guardian of the person or estate, or both, of  
4 the minor unless the court finds, upon good cause shown, that  
5 the appointment would no longer be in the best interest of the  
6 minor.

7 (c) If the minor is 14 years of age or more, the minor may  
8 nominate the guardian of the minor's person and estate, subject  
9 to approval of the court. If the minor's nominee is not  
10 approved by the court or if, after notice to the minor, the  
11 minor fails to nominate a guardian of the minor's person or  
12 estate, the court may appoint the guardian without nomination.

13 (d) The court shall not appoint as guardian of the person  
14 of the minor any person whom the court has determined had  
15 caused or substantially contributed to the minor becoming a  
16 neglected or abused minor as defined in the Juvenile Court Act  
17 of 1987 unless 2 years have elapsed since the last proven  
18 incident of abuse or neglect and the court determines that  
19 appointment of such person as guardian is in the best interests  
20 of the minor.

21 (e) Previous statements made by the minor relating to any  
22 allegations that the minor is an abused or neglected child  
23 within the meaning of the Abused and Neglected Child Reporting  
24 Act, or an abused or neglected minor within the meaning of the  
25 Juvenile Court Act of 1987, shall be admissible in evidence in  
26 a hearing concerning appointment of a guardian of the person or

1 estate of the minor. No such statement, however, if  
2 uncorroborated and not subject to cross-examination, shall be  
3 sufficient in itself to support a finding of abuse or neglect.  
4 (Source: P.A. 90-430, eff. 8-16-97; 90-472, eff. 8-17-97;  
5 90-796, eff. 12-15-98.)

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

7 Sec. 11-7. Parental right to custody.) If both parents of a  
8 minor are living and are competent to transact their own  
9 business and are fit persons, they are entitled to the custody  
10 of the person of the minor and the direction of his education.  
11 If one parent is dead and the surviving parent is competent to  
12 transact his own business and is a fit person, he is similarly  
13 entitled. The parents have equal powers, rights and duties  
14 concerning the minor. If the parents live apart, the court for  
15 good reason may award the custody and education of the minor to  
16 either parent or to some other person.

17 Fitness of the parent shall be determined, by a  
18 preponderance of the evidence, at the time of filing the  
19 petition to establish the guardianship. If a parent is found to  
20 be unfit, unwilling, or unable to care for a child, he or she  
21 shall not be entitled to custody and shall satisfy the  
22 provisions of subsection (b) of Section 11-14.1 of this Act  
23 before terminating the guardianship and regaining custody.

24 (Source: P.A. 79-328.)

1 (755 ILCS 5/11-14.1) (from Ch. 110 1/2, par. 11-14.1)

2 Sec. 11-14.1. Revocation of letters.

3 (a) Upon the minor reaching the age of majority, the  
4 letters of office shall be revoked only as to that minor and  
5 the guardianship over that minor shall be terminated. The  
6 letters of office and the guardianship shall remain as to any  
7 other minors included in the same letters of office or  
8 guardianship order.

9 (b) Other than as provided in subsection (a), when a parent  
10 has been found unfit, unwilling, or unable to care for a child,  
11 a guardianship of a minor shall not be terminated by a court,  
12 unless, upon clear and convincing evidence, the court finds  
13 that there has been a material change in circumstances since  
14 the entry of the order appointing the guardian and that the  
15 termination is in the best interest of the minor, considering,  
16 but not limited to the following:

17 (1) the extent to which the minor has integrated into  
18 the guardian's family;

19 (2) the effect the removal of the minor from the  
20 guardian's care would have on the minor;

21 (3) the relationship of the minor to the proposed new  
22 care giver or parent;

23 (4) the relative economic abilities of the parties to  
24 provide for the minor's needs;

25 (5) the physical and emotional abilities of the parties  
26 to provide for the minor's needs; and

1           (6) the environment the minor would be in after  
2           termination of the guardianship compared to the minor's  
3           current environment with the guardian.

4           (Source: P.A. 90-796, eff. 12-15-98.)