

# COMMITTEE REPORT

## MADAM PRESIDENT:

**The Senate Committee on Judiciary, to which was referred House Bill No. 1055, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1           Page 4, line 14, after "without" insert "**advance**".
- 2           Page 4, between lines 17 and 18, begin a new paragraph and insert:
- 3           "**(b) If:**
- 4                 **(1) a petition is filed under this section for the appointment of**
- 5                 **a temporary guardian; and**
- 6                 **(2) each person required to receive notice under**
- 7                 **IC 29-3-6-1(a) has not:**
- 8                         **(A) received a complete copy of the petition and notice**
- 9                         **required by IC 29-3-6-2 before the court considers and acts**
- 10                        **on the petition; or**
- 11                        **(B) received actual notice of the filing of the petition and**
- 12                        **specifically waived in writing the necessity for service of**
- 13                        **the notice required under IC 29-3-6-2 before the court**
- 14                        **considers and acts on the petition;**
- 15           **the petitioner shall, on the earlier of the date the court enters an**
- 16           **order scheduling a hearing on the petition or the date the court**
- 17           **enters an order appointing a temporary guardian, serve complete**
- 18           **copies of the petition, the court's order, and the notice required by**
- 19           **IC 29-3-6-2 on every person entitled to receive notice under**
- 20           **IC 29-3-6-1(a) and on each additional person to whom the court**
- 21           **directs that notice be given. The requirements of this subsection**

1       **are in addition to the petitioner's obligations under Rule 65 of the**  
 2       **Indiana Rules of Trial Procedure to make a specific showing of the**  
 3       **petitioner's efforts to provide advance notice to all interested**  
 4       **persons or the reasons why advance notice cannot or should not be**  
 5       **given."**

6       Page 4, line 18, strike "(b)" and insert "(c)".

7       Page 4, line 26, strike "(c)" and insert "(d)".

8       Page 4, line 32, strike "(d)" and insert "(e)".

9       Page 4, line 34, strike "(e)" and insert "(f)".

10       Page 4, between lines 35 and 36, begin a new paragraph and insert:

11       "SECTION 4. IC 29-3-3-7 IS ADDED TO THE INDIANA CODE  
 12       AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 13       1, 2011]: **Sec. 7. (a) Subject to subsection (e), a parent of a minor or**  
 14       **the guardian of a protected person may designate a standby**  
 15       **guardian by making a written declaration naming the individual**  
 16       **designated to serve as a standby guardian. A declarant may name**  
 17       **an alternate to the designated standby guardian if the designated**  
 18       **standby guardian is unable to serve, refuses to serve, renounces the**  
 19       **appointment, dies, or becomes incapacitated after the death of the**  
 20       **declarant.**

21       **(b) A declaration under this section must contain the following**  
 22       **information:**

23               **(1) The names of the declarant, the designated standby**  
 24               **guardian, and the alternate standby guardian, if any.**

25               **(2) The following information concerning each minor child or**  
 26               **protected person for whom a standby guardian is designated**  
 27               **by the declaration:**

28                       **(A) The person's full name as it appears on the birth**  
 29                       **certificate or as ordered by a court.**

30                       **(B) The person's date of birth.**

31                       **(C) The person's Social Security number, if any.**

32               **(3) A statement that the declaration becomes effective upon**  
 33               **the death or incapacity of the declarant.**

34               **(4) A statement that the declaration terminates ninety (90)**  
 35               **days after becoming effective unless the standby guardian**  
 36               **files a petition for a guardianship of the minor or protected**  
 37               **person during that ninety (90) day period.**

38       **(c) A declaration executed under this section must be signed by**

1       **the declarant in the presence of a notary public.**

2       **(d) A declaration executed under this section becomes effective**  
 3 **upon the death or incapacity (as defined in IC 29-3-1-7.5) of the**  
 4 **parent or guardian and terminates ninety (90) days after the**  
 5 **declaration becomes effective. However, if the designated standby**  
 6 **guardian files a petition for a guardianship of the minor or**  
 7 **protected person during that ninety (90) day period, the**  
 8 **declaration remains in effect until the court rules on the petition.**

9       **(e) A declaration executed under this section must be considered**  
 10 **by, but is not binding upon, the department of child services, a**  
 11 **probation department, or a juvenile court for purposes of**  
 12 **determining the placement of a child who is the subject of:**

- 13           **(1) an allegation of child abuse or neglect under IC 31-33;**  
 14           **(2) an open child in need of services case under IC 31-34; or**  
 15           **(3) an open delinquency case under IC 31-37.**

16       SECTION 5. IC 29-3-6-1, AS AMENDED BY P.L.143-2009,  
 17 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18 JULY 1, 2011]: Sec. 1. (a) When a petition for appointment of a  
 19 guardian or for the issuance of a protective order is filed with the court,  
 20 notice of the petition and the hearing on the petition shall be given by  
 21 first class postage prepaid mail as follows:

22           (1) If the petition is for the appointment of a successor guardian,  
 23 notice shall be given unless the court, for good cause shown,  
 24 orders that notice is not necessary.

25           (2) If the petition is for the appointment of a temporary guardian,  
 26 notice shall be given as required by ~~IC 29-3-3-4(a)~~: **IC 29-3-3-4.**

27           (3) If the subject of the petition is a minor, notice of the petition  
 28 and the hearing on the petition shall be given to the following  
 29 persons whose whereabouts can be determined upon reasonable  
 30 inquiry:

31           (A) The minor, if at least fourteen (14) years of age, unless the  
 32 minor has signed the petition.

33           (B) Any living parent of the minor, unless parental rights have  
 34 been terminated by a court order.

35           (C) Any person alleged to have had the principal care and  
 36 custody of the minor during the sixty (60) days preceding the  
 37 filing of the petition.

38           (D) Any other person that the court directs.

1 (4) If it is alleged that the person is an incapacitated person,  
 2 notice of the petition and the hearing on the petition shall be given  
 3 to the following persons whose whereabouts can be determined  
 4 upon reasonable inquiry:

5 (A) The alleged incapacitated person, the alleged incapacitated  
 6 person's spouse, and the alleged incapacitated person's adult  
 7 children, or if none, the alleged incapacitated person's parents.

8 (B) Any person who is serving as a guardian for, or who has  
 9 the care and custody of, the alleged incapacitated person.

10 (C) In case no person other than the incapacitated person is  
 11 notified under clause (A), at least one (1) of the persons most  
 12 closely related by blood or marriage to the alleged  
 13 incapacitated person.

14 (D) Any person known to the petitioner to be serving as the  
 15 alleged incapacitated person's attorney-in-fact under a durable  
 16 power of attorney.

17 (E) Any other person that the court directs.

18 Notice is not required under this subdivision if the person to be  
 19 notified waives notice or appears at the hearing on the petition.

20 (b) Whenever a petition (other than one for the appointment of a  
 21 guardian or for the issuance of a protective order) is filed with the  
 22 court, notice of the petition and the hearing on the petition shall be  
 23 given to the following persons, unless they appear or waive notice:

24 (1) The guardian.

25 (2) Any other persons that the court directs, including the  
 26 following:

27 (A) Any department, bureau, agency, or political subdivision  
 28 of the United States or of this state that makes or awards  
 29 compensation, pension, insurance, or other allowance for the  
 30 benefit of an alleged incapacitated person.

31 (B) Any department, bureau, agency, or political subdivision  
 32 of this state that may be charged with the supervision, control,  
 33 or custody of an alleged incapacitated person.

34 SECTION 6. IC 29-3-9-1, AS AMENDED BY P.L.101-2008,  
 35 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 36 JULY 1, 2011]: Sec. 1. (a) By a properly executed power of attorney,  
 37 a parent of a minor or a guardian (other than a temporary guardian) of  
 38 a protected person may delegate to another person for:

1 (1) any period during which the care and custody of the minor or  
2 protected person is entrusted to an institution furnishing care,  
3 custody, education, or training; or

4 (2) a period not exceeding twelve (12) months;  
5 any powers regarding support, custody, or property of the minor or  
6 protected person, except the power to consent to the marriage or  
7 adoption of a protected person who is a minor. **A delegation described**  
8 **in this subsection is effective immediately unless otherwise stated**  
9 **in the power of attorney.**

10 (b) A person having a power of attorney executed under subsection  
11 (a) has and shall exercise, for the period during which the power is  
12 effective, all other authority of the parent or guardian respecting the  
13 support, custody, or property of the minor or protected person except  
14 any authority expressly excluded in the written instrument delegating  
15 the power. However, the parent or guardian remains responsible for any  
16 act or omission of the person having the power of attorney with respect  
17 to the affairs, property, and person of the minor or protected person as  
18 though the power of attorney had never been executed.

19 (c) Except as otherwise stated in the power of attorney delegating  
20 powers under this section, a delegation of powers under this section  
21 may be revoked by a written instrument of revocation that:

22 (1) identifies the power of attorney revoked; and

23 (2) is signed by the:

24 (A) parent of a minor; or

25 (B) guardian of a protected person;

26 who executed the power of attorney.".

27 Page 7, line 26, delete "The record may".

- 1 Page 7, delete line 27.
- 2 Renumber all SECTIONS consecutively.  
(Reference is to HB 1055 as printed January 21, 2011.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 8, Nays 0.

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**Bray**

**Chairperson**