
HOUSE BILL No. 1238

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-3; IC 31-30-2-1; IC 31-34-21-7.7.

Synopsis: Guardianship of minors. Requires a court to notify the department of child services (department) of a hearing regarding the guardianship of a minor if the minor is or was a child in need of services. Requires the department to evaluate a person who is filing a petition to serve as a guardian of a minor if the department knows the person has a history of mental health issues or substance abuse. Requires a probate or juvenile court to include in its order creating a guardianship of a minor any terms and conditions that a parent must meet in order to seek modification or termination of the guardianship. Provides that if the court has knowledge that the parent has a history of mental health issues or substance abuse, the court shall require the department to evaluate the parent and report the findings to the court.

Effective: July 1, 2013.

Summers

January 14, 2013, read first time and referred to Committee on Family, Children and Human Affairs.

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First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1238



A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 29-3-5-1, AS AMENDED BY P.L.162-2011,
- 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2013]: Sec. 1. (a) Any person may file a petition for the
- 4 appointment of a person to serve as guardian for an incapacitated
- 5 person or minor under this chapter or to have a protective order issued
- 6 under IC 29-3-4. The petition must state the following:
- 7 (1) The name, age, residence, and post office address of the
- 8 alleged incapacitated person or minor for whom the guardian is
- 9 sought to be appointed or the protective order issued.
- 10 (2) The nature of the incapacity.
- 11 (3) The approximate value and description of the property of the
- 12 incapacitated person or minor, including any compensation,
- 13 pension, insurance, or allowance to which the incapacitated
- 14 person or minor may be entitled.
- 15 (4) If a limited guardianship is sought, the particular limitations
- 16 requested.
- 17 (5) Whether a protective order has been issued or a guardian has



1 been appointed or is acting for the incapacitated person or minor
2 in any state.
3 (6) The residence and post office address of the proposed
4 guardian or person to carry out the protective order and the
5 relationship to the alleged incapacitated person of:
6 (A) the proposed guardian; or
7 (B) the person proposed to carry out the protective order.
8 (7) The names and addresses, as far as known or as can
9 reasonably be ascertained, of the persons most closely related by
10 blood or marriage to the person for whom the guardian is sought
11 to be appointed or the protective order is issued.
12 (8) The name and address of the person or institution having the
13 care and custody of the person for whom the guardian is sought
14 to be appointed or the protective order is issued.
15 (9) The names and addresses of any other incapacitated persons
16 or minors for whom the proposed guardian or person to carry out
17 the protective order is acting if the proposed guardian or person
18 is an individual.
19 (10) The reasons the appointment of a guardian or issuance of a
20 protective order is sought and the interest of the petitioner in the
21 appointment or issuance.
22 (11) The name and business address of the attorney who is to
23 represent the guardian or person to carry out the protective order.
24 (12) Whether a child in need of services petition or a program of
25 informal adjustment has been filed regarding the minor for whom
26 a guardianship is being sought, and, if so, whether the case
27 regarding the minor is open at the time the guardianship petition
28 is filed.
29 (b) Notice of a petition under this section for the appointment of a
30 guardian or the issuance of a protective order and the hearing on the
31 petition shall be given under IC 29-3-6.
32 (c) After the filing of a petition, the court shall set a date for a
33 hearing on the issues raised by the petition. Unless an alleged
34 incapacitated person is already represented by counsel, the court may
35 appoint an attorney to represent the incapacitated person.
36 (d) A person alleged to be an incapacitated person must be present
37 at the hearing on the issues raised by the petition and any response to
38 the petition unless the court determines by evidence that:
39 (1) it is impossible or impractical for the alleged incapacitated
40 person to be present due to the alleged incapacitated person's
41 disappearance, absence from the state, or similar circumstance;
42 (2) it is not in the alleged incapacitated person's best interest to be

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1 present because of a threat to the health or safety of the alleged
 2 incapacitated person as determined by the court;
 3 (3) the incapacitated person has knowingly and voluntarily
 4 consented to the appointment of a guardian or the issuance of a
 5 protective order and at the time of such consent the incapacitated
 6 person was not incapacitated as a result of a mental condition that
 7 would prevent that person from knowingly and voluntarily
 8 consenting; or
 9 (4) the incapacitated person has knowingly and voluntarily
 10 waived notice of the hearing and at the time of such waiver the
 11 incapacitated person was not incapacitated as a result of a mental
 12 condition that would prevent that person from making a knowing
 13 and voluntary waiver of notice.
 14 (e) A person alleged to be an incapacitated person may present
 15 evidence and cross-examine witnesses at the hearing. The issues raised
 16 by the petition and any response to the petition shall be determined by
 17 a jury if a jury is requested no later than seventy-two (72) hours prior
 18 to the original date and time set for the hearing on the petition.
 19 However, in no event may a request for a jury trial be made after thirty
 20 (30) days have passed following the service of notice of a petition.
 21 (f) Any person may apply for permission to participate in the
 22 proceeding, and the court may grant the request with or without hearing
 23 upon determining that the best interest of the alleged incapacitated
 24 person or minor will be served by permitting the applicant's
 25 participation. The court may attach appropriate conditions to the
 26 permission to participate.
 27 (g) A court shall notify the department of child services of a hearing
 28 regarding the guardianship of a minor under this section if: ~~at~~
 29 (1) a child in need of services petition has been filed regarding
 30 the minor; ~~or~~
 31 **(2) the minor is or was a child in need of services; or**
 32 ~~(2) (3) a program of informal adjustment involving the minor is~~
 33 ~~pending.~~
 34 The department of child services may participate in a hearing regarding
 35 the guardianship of a minor described in this subsection.
 36 **(h) The department of child services shall evaluate a person who**
 37 **is petitioning to be a guardian under subsection (a) if the**
 38 **department of child services has knowledge that the petitioner has**
 39 **a history of mental health issues or substance abuse. The**
 40 **department shall report its findings to the court hearing the**
 41 **petition.**
 42 SECTION 2. IC 29-3-8-9, AS AMENDED BY P.L.48-2012,

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1 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2013]: Sec. 9. (a) A probate or juvenile court may include in
3 its order creating a guardianship of a minor ~~the following~~

4 ~~(1)~~ a requirement that the minor must reside with the guardian
5 until the guardianship is terminated or modified.

6 ~~(2)~~ **(b) A probate or juvenile court shall include in its order**
7 **creating a guardianship of a minor** any terms and conditions that a
8 parent must meet in order to seek modification or termination of the
9 guardianship. **If the court has knowledge that the parent has a**
10 **history of mental health issues or substance abuse, the court shall**
11 **require the department of child services to evaluate the parent and**
12 **report the findings to the court.**

13 ~~(b)~~ **(c)** Except as provided in IC 29-3-12, if an order creating a
14 guardianship contains terms and conditions described in subsection
15 ~~(a)(2)~~; **(b)**, the court may modify or terminate the guardianship only if
16 the parent:

- 17 (1) complies with the terms and conditions; and
18 (2) proves the parent's current fitness to assume all parental
19 obligations by a preponderance of the evidence.

20 ~~(c)~~ **(d)** If:

- 21 (1) a petition is filed for modification, resignation, or removal of
22 the guardian or termination of the guardianship before the parent
23 complies with the court ordered terms and conditions described
24 in subsection ~~(a)(2)~~; **(b)**; and
25 (2) the minor:

- 26 (A) was the subject of a petition alleging the child to be a child
27 in need of services; or
28 (B) is participating in a program of informal adjustment;

29 the court shall refer the petition to the department of child services for
30 the department of child services to determine the placement of the child
31 in accordance with the best interests of the child.

32 ~~(d)~~ **(e)** A court shall notify the department of child services:

33 (1) if:

- 34 (A) the court appoints a guardian for a minor who:
35 (i) was the subject of a petition alleging the minor to be a
36 child in need of services; ~~or~~

37 **(ii) is or was a child in need of services; or**

- 38 ~~(ii)~~ **(iii)** is participating in a program of informal adjustment;
39 and

- 40 (B) a petition to modify or terminate the guardianship of the
41 minor or a petition regarding the death, resignation, or removal
42 of the guardian is filed; and

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- 1 (2) of any hearings related to the petitions described under
 2 subdivision (1)(B).
- 3 ~~(e)~~ **(f)** If a minor was the subject of a petition alleging the minor to
 4 be a child in need of services or is participating in a program of
 5 informal adjustment, the court shall do the following at a hearing
 6 regarding a petition filed under this section:
- 7 (1) Consider the position of the department of child services.
 8 (2) If requested by the department of child services, allow the
 9 department of child services to present evidence regarding:
- 10 (A) whether the guardianship should be modified or
 11 terminated;
 12 (B) the fitness of the parent to provide for the care and
 13 supervision of the minor at the time of the hearing;
 14 (C) the appropriate care and placement of the child; and
 15 (D) the best interests of the child.
- 16 ~~(f)~~ **(g)** The department of child services or the proposed guardian
 17 shall notify the court creating a guardianship if the department of child
 18 services has approved financial assistance to a guardian for the benefit
 19 of the protected person, as a component of child services (as defined in
 20 IC 31-9-2-17.8(1)(E)). If the guardian will be provided assistance as a
 21 component of child services, the court shall order the guardian to
 22 provide financial support to the protected person to the extent the
 23 following resources do not fully support the needs of the protected
 24 person:
- 25 (1) The guardianship property of the protected person.
 26 (2) Child support or other financial assistance received by the
 27 guardian from the protected person's parent or parents.
 28 (3) Periodic payments the guardian receives from the department
 29 of child services for support of the protected person as set forth in
 30 the department of child service's rules or the terms of the
 31 guardianship assistance agreement.
- 32 SECTION 3. IC 31-30-2-1, AS AMENDED BY P.L.48-2012,
 33 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2013]: Sec. 1. (a) Except as provided in subsections (b) and
 35 (c), the juvenile court's jurisdiction over a delinquent child or a child
 36 in need of services and over the child's parent, guardian, or custodian
 37 continues until:
- 38 (1) the child becomes twenty-one (21) years of age, unless the
 39 court discharges the child and the child's parent, guardian, or
 40 custodian at an earlier time; or
 41 (2) guardianship of the child is awarded to the department of
 42 correction.

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1 (b) The juvenile court may, on its own motion, after guardianship of
 2 a child is awarded to the department of correction, reinstate the court's
 3 jurisdiction for the purpose of ordering the child's parent, guardian, or
 4 custodian to participate in programs operated by or through the
 5 department of correction.

6 (c) The juvenile court's jurisdiction over a parent or guardian of the
 7 estate of a child under this section continues until the parent or
 8 guardian of the estate has satisfied the financial obligation of the parent
 9 or guardian of the estate that is imposed under IC 31-40 (or
 10 IC 31-6-4-18 before its repeal).

11 (d) Except as provided in subsection (g), the jurisdiction of the
 12 juvenile court over a proceeding described in IC 31-30-1-1(10) for a
 13 guardianship of the person continues until the earlier of the date that:

14 (1) the juvenile court terminates the guardianship of the person;

15 or

16 (2) the child becomes:

17 (A) nineteen (19) years of age, if a child who is at least
 18 eighteen (18) years of age is a full-time student in a secondary
 19 school or the equivalent level of vocational or career and
 20 technical education; or

21 (B) eighteen (18) years of age, if clause (A) does not apply.

22 If the guardianship of the person continues after the child becomes the
 23 age specified in subdivision (2), the juvenile court shall transfer the
 24 guardianship of the person proceedings to a court having probate
 25 jurisdiction in the county in which the guardian of the person resides.
 26 If the juvenile court has both juvenile and probate jurisdiction, the
 27 juvenile court may transfer the guardianship of the person proceedings
 28 to the probate docket of the court.

29 (e) The jurisdiction of the juvenile court to enter, modify, or enforce
 30 a support order under IC 31-40-1-5 continues during the time that the
 31 court retains jurisdiction over a guardianship of the person proceeding
 32 described in IC 31-30-1-1(10).

33 (f) At any time, a juvenile court may, with the consent of a probate
 34 court, transfer to the probate court guardianship of the person
 35 proceedings and any related support order initiated in the juvenile
 36 court.

37 (g) A juvenile court may retain jurisdiction over an older youth, as
 38 defined in IC 31-28-5.8-4, who is a recipient or beneficiary of:

39 (1) kinship guardianship assistance under Title IV-E of the federal
 40 Social Security Act (42 U.S.C. 673), as amended; or

41 (2) other financial assistance provided to or for the benefit of a
 42 child who:

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- 1 (A) was previously adjudicated as a child in need of services
- 2 or delinquent child;
- 3 (B) is a protected person under a legal guardianship if
- 4 ~~IC 29-3-8-9(f)~~ **IC 29-3-8-9(g)** applies; and
- 5 (C) is approved for assistance under a rule or published policy
- 6 of the department.

7 SECTION 4. IC 31-34-21-7.7, AS AMENDED BY P.L.162-2011,
 8 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2013]: Sec. 7.7. (a) If the juvenile court approves a
 10 permanency plan under section 7 of this chapter that provides for the
 11 appointment of a guardian for a child, the juvenile court may appoint
 12 a guardian of the person and administer a guardianship for the child
 13 under IC 29-3.

14 (b) If a guardianship of the person proceeding for the child is
 15 pending in a probate court, the probate court shall transfer the
 16 proceeding to the juvenile court.

17 (c) In creating a guardianship of a minor, a probate or juvenile court
 18 may include in an order the requirements and terms and conditions
 19 described in ~~IC 29-3-8-9(a)~~ **IC 29-3-8-9(b)**.

20 (d) If the juvenile court closes a child in need of services case after
 21 creating a guardianship, the juvenile court order creating the
 22 guardianship survives the closure of the child in need of services case.

23 (e) If the juvenile court closes the child in need of services case after
 24 creating a guardianship, the probate court may assume or reassume
 25 jurisdiction of the guardianship and take further action as necessary.

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