



Reprinted  
February 4, 2014

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## SENATE BILL No. 59

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DIGEST OF SB 59 (Updated February 3, 2014 2:40 pm - DI 92)

**Citations Affected:** IC 29-3; IC 31-9; IC 31-11; IC 31-15.

**Synopsis:** Guardian filing for dissolution of marriage, legal separation, or annulment. Allows a guardian, including a volunteer advocates for senior program or a volunteer advocates for incapacitated adults program, to request permission to file a petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of an incapacitated person. Allows the court to grant a request for permission to file a petition for a dissolution of marriage, a legal separation, or an annulment on behalf of an incapacitated person only if the court determines by clear and convincing evidence that petitioning for a dissolution of marriage, a legal separation, or an annulment is in the best interests of the incapacitated person. Provides that the guardian may not delegate the power to request permission to file a petition for dissolution, separation, or annulment. Requires the guardian to: (1) be named in a petition for dissolution of marriage, legal separation, or annulment; and (2) file, with the petition, a copy of the court order granting the request for permission to file the petition. Permits a guardian to file a petition for dissolution of marriage, legal separation, or annulment on behalf of an incapacitated person in the guardian's county of residence.

**Effective:** July 1, 2014.

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### Bray, Randolph

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January 7, 2014, read first time and referred to Committee on Judiciary.  
January 23, 2014, amended, reported favorably — Do Pass.  
February 3, 2014, read second time, amended, ordered engrossed.

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SB 59—LS 6241/DI 110





Reprinted  
February 4, 2014

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## SENATE BILL No. 59

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A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

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

- 1 SECTION 1. IC 29-3-6-3 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) At any time after the  
3 appointment of a guardian or the issuance of a protective order, any  
4 person may, in person or by the person's attorney, serve upon the  
5 guardian or the guardian's attorney, and file with the clerk of the court  
6 where the proceedings are pending, a written request together with a  
7 written admission or proof of service stating that the person desires  
8 written notice of all hearings and copies of all pleadings or other papers  
9 in connection with:  
10 (1) the settlement of accounts;  
11 (2) the sale, mortgage, lease, or exchange of any property of the  
12 protected person;  
13 (3) allowances of any nature payable from the protected person's  
14 property;  
15 (4) the investment of funds of the protected person;  
16 (5) a petition to request the authority to petition for

SB 59—LS 6241/DI 110



1           **dissolution of marriage, legal separation, or annulment of**  
 2           **marriage on behalf of the protected person as provided under**  
 3           **IC 29-3-9-12;**

4           ~~(5)~~ (6) the removal, suspension, or discharge of the guardian;

5           ~~(6)~~ (7) the final termination of the guardianship; or

6           ~~(7)~~ (8) any other notice or matter as specified in the request.

7           The applicant requesting special notice must include in the written  
 8           request the applicant's post office address or that of the applicant's  
 9           attorney. The court may determine that any person requesting notice  
 10          under this section has no interest in the proceeding, either generally or  
 11          with respect to a particular matter, and is not entitled to the notice  
 12          requested. Unless the court otherwise directs, upon filing the request,  
 13          the guardian or the guardian's attorney shall comply with the request.

14          (b) Failure to comply with a request for notice under this section  
 15          does not affect the validity of the proceeding.

16          SECTION 2. IC 29-3-8-4 IS AMENDED TO READ AS FOLLOWS  
 17          [EFFECTIVE JULY 1, 2014]: Sec. 4. A guardian (other than a  
 18          temporary guardian) may exercise all of the powers required to perform  
 19          the guardian's responsibilities, including the following:

20           (1) To receive and issue a receipt for property payable to the  
 21           protected person or the protected person's parent, guardian, or  
 22           custodian from any source, including any statutory benefit,  
 23           insurance system, or any private contract, devise, trust,  
 24           guardianship, or custodianship.

25           (2) If reasonable, to delegate to the protected person certain  
 26           responsibilities for decisions affecting the protected person's  
 27           business affairs and well-being.

28           (3) To invest and reinvest the property of the protected person in  
 29           accordance with powers vested in, and according to the standards  
 30           imposed upon, trustees under IC 30-4-3-3(c).

31           (4) To secure the appointment of a guardian or co-guardian in any  
 32           other state, when needed, with respect to any part or all of the  
 33           guardianship property located in another state, to confer upon the  
 34           appointed guardian any or all of the guardian's powers as guardian  
 35           with respect to the property.

36           (5) To continue any business of the protected person, whether in  
 37           corporate, partnership, or proprietorship form, according to the  
 38           rules for continuing the business of a decedent specified in  
 39           IC 29-1-13-11.

40           (6) To pay to the person, guardian, department, bureau, or agency  
 41           having care and custody of the protected person, or to the  
 42           protected person if at least fourteen (14) years of age, a



1 reasonable amount to be expended for the support of the protected  
 2 person and the protected person's dependents, with due regard to  
 3 the following:

4 (A) The size of the guardianship property, the probable  
 5 duration of the guardianship, and the extent to which the  
 6 protected person in the future may be self-sufficient and able  
 7 to manage the protected person's financial affairs and property.

8 (B) The accustomed standard of living of the protected person  
 9 and the protected person's dependents.

10 (C) Other funds or sources used for the support of the  
 11 protected person and the protected person's dependents.

12 (7) To distribute income and discretionary amounts of principal  
 13 in one (1) or more of the following ways as the guardian believes  
 14 to be in the best interests of the protected person:

15 (A) Directly to the protected person.

16 (B) To a guardian of the protected person appointed in another  
 17 state.

18 (C) To a custodian for the protected person under IC 30-2-8.5.

19 (D) To an adult relative of the protected person.

20 (E) By expending the money or using the property directly for  
 21 the benefit of the protected person.

22 (8) To apply the guardianship property to or for the benefit of any  
 23 person, including the protected person, in reimbursement for  
 24 reasonable expenditures made in good faith on behalf of the  
 25 protected person that the guardian might have made, or in  
 26 advance for services to be rendered to the protected person if it is  
 27 reasonable to expect that the services will be performed and  
 28 advance payments are reasonably necessary under the  
 29 circumstances.

30 (9) To bind all or any part of the guardianship property in a  
 31 transaction for the benefit of the protected person, unless the third  
 32 party dealing with the guardian is acting in bad faith.

33 (10) Except as provided in IC 29-3-2-6(d), powers conferred upon  
 34 trustees and personal representatives respectively by IC 30-4-3-3  
 35 and IC 29-1-7.5-3. However, if there is a conflict, the broader  
 36 power controls.

37 (11) To exercise on behalf of the protected person powers that are  
 38 the same as those granted to the parent of a minor under  
 39 IC 29-3-3-3.

40 **(12) To petition the court to request the authority to petition**  
 41 **for dissolution of marriage, legal separation, or annulment of**  
 42 **marriage on behalf of the protected person, if the protected**



- 1           **person is an incapacitated person, as provided under**  
 2           **IC 29-3-9-12.**  
 3           SECTION 3. IC 29-3-8.5-4, AS AMENDED BY P.L.72-2010,  
 4           SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5           JULY 1, 2014]: Sec. 4. (a) A volunteer advocates for seniors program  
 6           or a volunteer advocates for incapacitated adults program may:  
 7           (1) consent to medical and other professional care and treatment  
 8           for the incapacitated person's or senior's health and welfare;  
 9           (2) secure the appointment of a guardian or coguardian in another  
 10           state;  
 11           (3) take custody of the incapacitated person or senior and  
 12           establish the incapacitated person's or senior's residence within  
 13           Indiana or another state in accordance with IC 29-3-9-2;  
 14           (4) institute proceedings or take other appropriate action to  
 15           compel the performance by any person of a duty to support the  
 16           incapacitated person's or senior's health or welfare;  
 17           (5) protect and preserve the property of the incapacitated person  
 18           or senior and preserve any property in excess of the incapacitated  
 19           person's or senior's current needs; ~~and~~  
 20           (6) delegate to the incapacitated person or senior certain  
 21           responsibilities for decisions affecting the incapacitated person's  
 22           or senior's business affairs and well-being; **and**  
 23           **(7) petition the court to request the authority to petition for**  
 24           **dissolution of marriage, legal separation, or annulment of**  
 25           **marriage on behalf of an incapacitated person as provided**  
 26           **under IC 29-3-9-12.**  
 27           (b) A volunteer advocates for seniors program or a volunteer  
 28           advocates for incapacitated adults program may exercise the powers of  
 29           a guardian of a minor listed in IC 29-3-8-2 and IC 29-3-8-4.  
 30           SECTION 4. IC 29-3-9-1, AS AMENDED BY P.L.178-2011,  
 31           SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32           JULY 1, 2014]: Sec. 1. (a) **Except as provided in subsection (b),** by  
 33           a properly executed power of attorney, a parent of a minor or a  
 34           guardian (other than a temporary guardian) of a protected person may  
 35           delegate to another person for:  
 36           (1) any period during which the care and custody of the minor or  
 37           protected person is entrusted to an institution furnishing care,  
 38           custody, education, or training; or  
 39           (2) a period not exceeding twelve (12) months;  
 40           any powers regarding support, custody, or property of the minor or  
 41           protected person. ~~except the power to consent to the marriage or~~  
 42           ~~adoption of a protected person who is a minor.~~ A delegation described



1 in this subsection is effective immediately unless otherwise stated in  
2 the power of attorney.

3 **(b) A parent of a minor or a guardian of a protected person may**  
4 **not delegate under subsection (a) the power to:**

5 **(1) consent to the marriage or adoption of a protected person**  
6 **who is a minor; or**

7 **(2) petition the court to request the authority to petition for**  
8 **dissolution of marriage, legal separation, or annulment of**  
9 **marriage on behalf of a protected person as provided under**  
10 **IC 29-3-9-12.**

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

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

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

25 (2) is signed by the:

26 (A) parent of a minor; or

27 (B) guardian of a protected person;

28 who executed the power of attorney.

29 SECTION 5. IC 29-3-9-12 IS ADDED TO THE INDIANA CODE  
30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
31 1, 2014]: **Sec. 12. (a) If a guardian of an incapacitated person**  
32 **determines that:**

33 **(1) a dissolution of the incapacitated person's marriage;**

34 **(2) a legal separation of the incapacitated person and the**  
35 **incapacitated person's spouse; or**

36 **(3) an annulment of the incapacitated person's marriage;**

37 **is in the best interests of the incapacitated person, the guardian**  
38 **shall petition the court to request the authority to petition for a**  
39 **dissolution of marriage, a legal separation, or an annulment of**  
40 **marriage on behalf of the incapacitated person.**

41 **(b) The petition to request authority described in subsection (a)**  
42 **must set forth the following:**



- 1           **(1) The purpose for petitioning for dissolution of marriage,**  
 2           **legal separation, or annulment of marriage.**  
 3           **(2) The names and addresses of all the following:**  
 4               **(A) The incapacitated person's spouse.**  
 5               **(B) If the incapacitated person has adult children, any**  
 6               **adult children of the incapacitated person who are not**  
 7               **guardians of the incapacitated person.**  
 8               **(C) If the incapacitated person is a minor, a parent of the**  
 9               **incapacitated person whose parental rights have not been**  
 10              **terminated.**  
 11           **(c) A guardian that petitions the court to request authority as**  
 12           **described in subsection (a) shall provide a copy of the petition, on**  
 13           **or before the date the petition is filed, to all the following:**  
 14               **(1) The individuals listed in subsection (b)(2).**  
 15               **(2) Any other interested person as ordered by the court.**  
 16           **(d) The court shall:**  
 17               **(1) set a date for a hearing on the petition to request authority**  
 18               **described in subsection (a);**  
 19               **(2) notify:**  
 20                   **(A) all the parties; and**  
 21                   **(B) any other individual listed in subsection (c);**  
 22               **of the hearing at least thirty (30) days before the hearing; and**  
 23               **(3) hold a hearing on the petition to request the authority**  
 24               **described in subsection (a).**  
 25           **(e) If the court determines by clear and convincing evidence that**  
 26           **petitioning for:**  
 27               **(1) a dissolution of the incapacitated person's marriage;**  
 28               **(2) a legal separation of the incapacitated person and the**  
 29               **incapacitated person's spouse; or**  
 30               **(3) an annulment of the incapacitated person's marriage;**  
 31           **is in the best interests of the incapacitated person, the court shall**  
 32           **grant the petition and authorize the guardian to petition for**  
 33           **dissolution of marriage, legal separation, or annulment of marriage**  
 34           **on behalf of the incapacitated person.**  
 35           **(f) In making a determination under subsection (e), the court**  
 36           **shall consider the risk of harm to the incapacitated person's**  
 37           **physical or mental health, safety, or property if the court does not**  
 38           **grant the petition and authorize the guardian to petition for**  
 39           **dissolution of marriage, legal separation, or annulment of marriage**  
 40           **on behalf of the incapacitated person.**  
 41           **(g) In making a determination under subsection (e), the court**  
 42           **shall also give appropriate weight to evidence of:**





1           (1) the incapacitated person's intent or preferences; or  
 2           (2) a prior decision of the incapacitated person;  
 3 for or against a dissolution of marriage, a legal separation, or an  
 4 annulment of marriage. The court may reduce the weight given to  
 5 evidence of the intent, preferences, or prior decisions of the  
 6 incapacitated person if the court concludes, from all of the relevant  
 7 facts and circumstances, that the passage of time, the relevant  
 8 circumstances at the time of a prior statement or action by the  
 9 incapacitated person, or changed circumstances after a prior  
 10 statement or action make the prior statement or action less reliable  
 11 evidence of the incapacitated person's best interests and current  
 12 preferences. The court may give no weight to evidence considered  
 13 under this subsection that the court concludes is unreliable  
 14 evidence of the incapacitated person's best interests and current  
 15 preferences.

16           (h) This section does not require a guardian of an incapacitated  
 17 person to file a petition under this section in order to:

18           (1) defend the incapacitated person against a petition for  
 19 dissolution, legal separation, or annulment of marriage that  
 20 was filed before or after the filing of the petition for  
 21 guardianship; or

22           (2) finalize:

23           (A) a dissolution of the incapacitated person's marriage;

24           (B) a legal separation between the incapacitated person  
 25 and the incapacitated person's spouse; or

26           (C) an annulment of the incapacitated person's marriage;  
 27 if the petition for dissolution of marriage, legal separation, or  
 28 annulment of marriage was filed by the incapacitated person  
 29 or the incapacitated person's spouse before the appointment  
 30 of the guardian.

31           SECTION 6. IC 29-3-9-13 IS ADDED TO THE INDIANA CODE  
 32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 33 1, 2014]: Sec. 13. (a) This section applies if a court has authorized  
 34 a guardian to petition for dissolution of marriage, legal separation,  
 35 or annulment of marriage on behalf of an incapacitated person  
 36 under section 12 of this chapter.

37           (b) A guardian may file a petition for dissolution on behalf of an  
 38 incapacitated person under IC 31-15-2-4 in the county where the  
 39 guardian resides in accordance with IC 31-15-2-6.

40           (c) A guardian may file a petition for legal separation on behalf  
 41 of an incapacitated person under IC 31-15-3-4 in the county where  
 42 the guardian resides in accordance with IC 31-15-3-6.



1           **(d) A guardian may file an action to annul a marriage under**  
 2 **IC 31-11-10 in the county where the guardian resides in**  
 3 **accordance with IC 31-11-10-4.**

4           SECTION 7. IC 31-9-2-49 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 49. **(a) "Guardian",**  
 6 **for purposes of IC 31-11-10-1, IC 31-15-2-5, and IC 31-15-3-4, has**  
 7 **the meaning set forth in IC 29-3-1-6.**

8           **(b) "Guardian",** for purposes of the juvenile law, means a person  
 9 appointed by a court to have the care and custody of a child or the  
 10 child's estate, or both.

11           SECTION 8. IC 31-9-2-53.5 IS ADDED TO THE INDIANA CODE  
 12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 13 1, 2014]: **Sec. 53.5. "Incapacitated person", for purposes of**  
 14 **IC 31-11-10-1, IC 31-15-2-5, and IC 31-15-3-4, has the meaning set**  
 15 **forth in IC 29-3-1-7.5.**

16           SECTION 9. IC 31-11-10-1 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) This section  
 18 applies to a marriage that is voidable under IC 31-11-9-2 on the ground  
 19 that a party to the marriage was incapable because of age or mental  
 20 incompetency of contracting the marriage.

21           (b) The incapable party described in subsection (a) may file a  
 22 action to annul the marriage in a court that has jurisdiction over the  
 23 action under section 3 of this chapter.

24           **(c) If a guardian of an incapacitated person is filing a petition**  
 25 **for annulment of a marriage on behalf of the incapacitated person,**  
 26 **the petition for annulment must set forth the name and address of**  
 27 **the guardian.**

28           **(d) If a guardian of an incapacitated person files a petition for**  
 29 **annulment of a marriage on behalf of the incapacitated person, the**  
 30 **guardian shall file with the petition a copy of the court order**  
 31 **granting authority to petition for annulment of marriage described**  
 32 **in IC 29-3-9-12.**

33           SECTION 10. IC 31-11-10-4 IS AMENDED TO READ AS  
 34 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. **(a) An action to**  
 35 **annul a voidable marriage under this chapter must be conducted in**  
 36 **accordance with IC 31-15.**

37           **(b) If a court has authorized a guardian to file an action to annul**  
 38 **a marriage on behalf of an incapacitated person under**  
 39 **IC 29-3-9-12, the guardian may file an action to annul a marriage**  
 40 **in the guardian's county of residence if the guardian has resided in**  
 41 **that county for at least three (3) months immediately preceding the**  
 42 **filing of the action.**



1 SECTION 11. IC 31-15-2-5 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) A petition for  
 3 dissolution of marriage must:

4 (1) be verified; and

5 (2) set forth the following:

6 (A) The residence of each party and the length of residence in  
 7 the state and county.

8 (B) The date of the marriage.

9 (C) The date on which the parties separated.

10 (D) The name, age, and address of:

11 (i) any living child less than twenty-one (21) years of age;  
 12 and

13 (ii) any incapacitated child;

14 of the marriage and whether the wife is pregnant.

15 (E) The grounds for dissolution of the marriage.

16 (F) The relief sought.

17 **(G) If a guardian of an incapacitated person is filing the**  
 18 **petition for dissolution of marriage on behalf of the**  
 19 **incapacitated person, the name and address of the**  
 20 **guardian.**

21 **(b) If a guardian of an incapacitated person files a petition for**  
 22 **dissolution of a marriage on behalf of the incapacitated person, the**  
 23 **guardian shall file with the petition a copy of the court order**  
 24 **granting authority to petition for dissolution of marriage described**  
 25 **in IC 29-3-9-12.**

26 SECTION 12. IC 31-15-2-6 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) At the time of the  
 28 filing of a petition under section 4 of this chapter, at least one (1) of the  
 29 parties must have been:

30 (1) a resident of Indiana; or

31 (2) stationed at a United States military installation within  
 32 Indiana;

33 for six (6) months immediately preceding the filing of the petition.

34 **(b) Except as provided in subsection (c),** at the time of the filing  
 35 of a petition under section 4 of this chapter, at least one (1) of the  
 36 parties must have been:

37 (1) a resident of the county; or

38 (2) stationed at a United States military installation within the  
 39 county;

40 where the petition is filed for three (3) months immediately preceding  
 41 the filing of the petition.

42 **(c) If a court has authorized a guardian to file a petition under**



1 **section 4 of this chapter on behalf of an incapacitated person under**  
 2 **IC 29-3-9-12, the guardian may file the petition for dissolution in**  
 3 **the guardian's county of residence if the guardian has resided in**  
 4 **that county for at least three (3) months immediately preceding the**  
 5 **filing of the petition.**

6 SECTION 13. IC 31-15-3-4 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) A proceeding for  
 8 legal separation is commenced by the filing of a petition entitled, "In  
 9 Re the legal separation of \_\_\_\_\_ and \_\_\_\_\_". The petition  
 10 must:

- 11 (1) be verified; and
- 12 (2) set forth the following:
  - 13 (A) The residence of each party and the length of residence in
  - 14 the state and county.
  - 15 (B) The date of the marriage.
  - 16 (C) The date on which the parties separated.
  - 17 (D) The names, ages, and addresses of:
    - 18 (i) any living child less than twenty-one (21) years of age;
    - 19 and
    - 20 (ii) any incapacitated child;
  - 21 of the marriage and whether the wife is pregnant.
  - 22 (E) The grounds for legal separation.
  - 23 (F) The relief sought.
  - 24 **(G) If a guardian of an incapacitated person is filing the**
  - 25 **petition for legal separation on behalf of the incapacitated**
  - 26 **person, the name and address of the guardian.**

27 **(b) If a guardian of an incapacitated person files a petition for**  
 28 **legal separation on behalf of the incapacitated person, the guardian**  
 29 **shall file with the petition a copy of the court order granting**  
 30 **authority to petition for legal separation described in IC 29-3-9-12.**

31 SECTION 14. IC 31-15-3-6 IS AMENDED TO READ AS  
 32 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) At the time of the  
 33 filing of a petition for legal separation under section 4 of this chapter,  
 34 at least one (1) of the parties must have been:

- 35 (1) a resident of Indiana; or
  - 36 (2) stationed at a United States military installation within
  - 37 Indiana;
- 38 for six (6) months immediately preceding the filing of each petition.

39 **(b) Except as provided in subsection (c), at the time of the filing**  
 40 **of a petition for legal separation under section 4 of this chapter, at least**  
 41 **one (1) of the parties must have been:**

- 42 (1) a resident of the county; or



1           (2) stationed at a United States military installation within the  
2           county;  
3           where the petition is filed for three (3) months immediately preceding  
4           the filing of the petition.  
5           **(c) If a court has authorized a guardian to file a petition for**  
6           **legal separation under section 4 of this chapter on behalf of an**  
7           **incapacitated person under IC 29-3-9-12, the guardian may file the**  
8           **petition in the guardian's county of residence if the guardian has**  
9           **resided in that county for at least three (3) months immediately**  
10          **preceding the filing of the petition.**



## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 59, 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:

Page 1, line 16, after "(5) a" insert "**petition to**".

Page 1, line 16, delete "for permission to file a petition of" and insert "**the authority to petition for**".

Page 2, line 1, delete "marriage" and insert "**marriage, legal separation, or annulment of marriage**".

Page 2, line 1, delete "person;" and insert "**person as provided under IC 29-3-9-12;**".

Page 2, delete lines 14 through 27, begin a new paragraph and insert:

"SECTION 2. IC 29-3-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. A guardian (other than a temporary guardian) may exercise all of the powers required to perform the guardian's responsibilities, including the following:

- (1) To receive and issue a receipt for property payable to the protected person or the protected person's parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or any private contract, devise, trust, guardianship, or custodianship.
- (2) If reasonable, to delegate to the protected person certain responsibilities for decisions affecting the protected person's business affairs and well-being.
- (3) To invest and reinvest the property of the protected person in accordance with powers vested in, and according to the standards imposed upon, trustees under IC 30-4-3-3(c).
- (4) To secure the appointment of a guardian or co-guardian in any other state, when needed, with respect to any part or all of the guardianship property located in another state, to confer upon the appointed guardian any or all of the guardian's powers as guardian with respect to the property.
- (5) To continue any business of the protected person, whether in corporate, partnership, or proprietorship form, according to the rules for continuing the business of a decedent specified in IC 29-1-13-11.
- (6) To pay to the person, guardian, department, bureau, or agency having care and custody of the protected person, or to the protected person if at least fourteen (14) years of age, a



reasonable amount to be expended for the support of the protected person and the protected person's dependents, with due regard to the following:

- (A) The size of the guardianship property, the probable duration of the guardianship, and the extent to which the protected person in the future may be self-sufficient and able to manage the protected person's financial affairs and property.
  - (B) The accustomed standard of living of the protected person and the protected person's dependents.
  - (C) Other funds or sources used for the support of the protected person and the protected person's dependents.
- (7) To distribute income and discretionary amounts of principal in one (1) or more of the following ways as the guardian believes to be in the best interests of the protected person:
- (A) Directly to the protected person.
  - (B) To a guardian of the protected person appointed in another state.
  - (C) To a custodian for the protected person under IC 30-2-8.5.
  - (D) To an adult relative of the protected person.
  - (E) By expending the money or using the property directly for the benefit of the protected person.
- (8) To apply the guardianship property to or for the benefit of any person, including the protected person, in reimbursement for reasonable expenditures made in good faith on behalf of the protected person that the guardian might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect that the services will be performed and advance payments are reasonably necessary under the circumstances.
- (9) To bind all or any part of the guardianship property in a transaction for the benefit of the protected person, unless the third party dealing with the guardian is acting in bad faith.
- (10) Except as provided in IC 29-3-2-6(d), powers conferred upon trustees and personal representatives respectively by IC 30-4-3-3 and IC 29-1-7.5-3. However, if there is a conflict, the broader power controls.
- (11) To exercise on behalf of the protected person powers that are the same as those granted to the parent of a minor under IC 29-3-3-3.
- (12) To petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the protected person, if the protected**



**person is an incapacitated person, as provided under IC 29-3-9-12."**

Page 3, delete lines 6 through 8, begin a new line block indented and insert:

**"(7) petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of an incapacitated person as provided under IC 29-3-9-12."**

Page 3, line 31, delete "request permission to file a petition for dissolution" and insert "**petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment**".

Page 3, line 32, delete "as described in" and insert "**as provided under IC 29-3-9-12."**

Page 3, delete line 33.

Page 4, between lines 9 and 10, begin a new paragraph and insert:

**"SECTION 5. IC 29-3-9-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. (a) If a guardian of an incapacitated person determines that:**

- (1) a dissolution of the incapacitated person's marriage;**
- (2) a legal separation of the incapacitated person and the incapacitated person's spouse; or**
- (3) an annulment of the incapacitated person's marriage;**

**is in the best interests of the incapacitated person, the guardian shall petition the court to request the authority to petition for a dissolution of marriage, a legal separation, or an annulment of marriage on behalf of the incapacitated person.**

**(b) The petition to request authority described in subsection (a) must set forth the following:**

- (1) The purpose for petitioning for dissolution of marriage, legal separation, or annulment of marriage.**
- (2) The names and addresses of all the following:**
  - (A) The incapacitated person's spouse.**
  - (B) If the incapacitated person has adult children, any adult children of the incapacitated person who are not guardians of the incapacitated person.**
  - (C) If the incapacitated person is a minor, a parent of the incapacitated person whose parental rights have not been terminated.**

**(c) A guardian that petitions the court to request authority as described in subsection (a) shall provide a copy of the petition, on**





or before the date the petition is filed, to all the following:

- (1) The individuals listed in subsection (b)(2).
- (2) Any other interested person as ordered by the court.

(d) The court shall:

- (1) set a date for a hearing on the petition to request authority described in subsection (a);
- (2) notify:
  - (A) all the parties; and
  - (B) any other individual listed in subsection (c);
 of the hearing at least thirty (30) days before the hearing; and
- (3) hold a hearing on the petition to request the authority described in subsection (a).

(e) If the court determines by a preponderance of the evidence that petitioning for:

- (1) a dissolution of the incapacitated person's marriage;
- (2) a legal separation of the incapacitated person and the incapacitated person's spouse; or
- (3) an annulment of the incapacitated person's marriage;

is in the best interests of the incapacitated person, the court shall grant the petition and authorize the guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the incapacitated person.

(f) This section does not require a guardian of an incapacitated person to file a petition under this section in order to:

- (1) defend the incapacitated person against a petition for dissolution, legal separation, or annulment of marriage that was filed before or after the filing of the petition for guardianship; or
- (2) finalize:
  - (A) a dissolution of the incapacitated person's marriage;
  - (B) a legal separation between the incapacitated person and the incapacitated person's spouse; or
  - (C) an annulment of the incapacitated person's marriage; if the petition for dissolution of marriage, legal separation, or annulment of marriage was filed by the incapacitated person or the incapacitated person's spouse before the appointment of the guardian.

SECTION 6. IC 29-3-9-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. (a) This section applies if a court has authorized a guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of an incapacitated person



under section 12 of this chapter.

**(b) A guardian may file a petition for dissolution on behalf of an incapacitated person under IC 31-15-2-4 in the county where the guardian resides in accordance with IC 31-15-2-6.**

**(c) A guardian may file a petition for legal separation on behalf of an incapacitated person under IC 31-15-3-4 in the county where the guardian resides in accordance with IC 31-15-3-6.**

**(d) A guardian may file an action to annul a marriage under IC 31-11-10 in the county where the guardian resides in accordance with IC 31-11-10-4."**

Page 4, line 12, after "of" insert "**IC 31-11-10-1,**".

Page 4, line 12, after "IC 31-15-2-5," insert "**and IC 31-15-3-4,**".

Page 4, delete lines 17 through 20, begin a new paragraph and insert:

**"SECTION 7. IC 31-9-2-53.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 53.5. "Incapacitated person", for purposes of IC 31-11-10-1, IC 31-15-2-5, and IC 31-15-3-4, has the meaning set forth in IC 29-3-1-7.5.**

**SECTION 8. IC 31-11-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) This section applies to a marriage that is voidable under IC 31-11-9-2 on the ground that a party to the marriage was incapable because of age or mental incompetency of contracting the marriage.**

**(b) The incapable party described in subsection (a) may file an action to annul the marriage in a court that has jurisdiction over the action under section 3 of this chapter.**

**(c) If a guardian of an incapacitated person is filing a petition for annulment of a marriage on behalf of the incapacitated person, the petition for annulment must set forth the name and address of the guardian.**

**(d) If a guardian of an incapacitated person files a petition for annulment of a marriage on behalf of the incapacitated person, the guardian shall file with the petition a copy of the court order granting authority to petition for annulment of marriage described in IC 29-3-9-12.**

**SECTION 9. IC 31-11-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) An action to annul a voidable marriage under this chapter must be conducted in accordance with IC 31-15.**

**(b) If a court has authorized a guardian to file an action to annul a marriage on behalf of an incapacitated person under**



**IC 29-3-9-12, the guardian may file an action to annul a marriage in the guardian's county of residence if the guardian has resided in that county for at least three (3) months immediately preceding the filing of the action."**

Page 4, line 37, delete "a protected" and insert "**an incapacitated**".

Page 4, line 38, delete "protected" and insert "**incapacitated**".

Page 4, line 40, delete "a protected" and insert "**an incapacitated**".

Page 4, line 41, delete "protected" and insert "**incapacitated**".

Page 5, line 1, delete "permission to file the" and insert "**authority to**".

Page 5, line 2, delete "IC 29-3-8-4.5." and insert "**IC 29-3-9-12.**".

Page 5, after line 2, begin a new paragraph and insert:

"SECTION 10. IC 31-15-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) At the time of the filing of a petition under section 4 of this chapter, at least one (1) of the parties must have been:

- (1) a resident of Indiana; or
- (2) stationed at a United States military installation within Indiana;

for six (6) months immediately preceding the filing of the petition.

(b) **Except as provided in subsection (c)**, at the time of the filing of a petition under section 4 of this chapter, at least one (1) of the parties must have been:

- (1) a resident of the county; or
- (2) stationed at a United States military installation within the county;

where the petition is filed for three (3) months immediately preceding the filing of the petition.

**(c) If a court has authorized a guardian to file a petition under section 4 of this chapter on behalf of an incapacitated person under IC 29-3-9-12, the guardian may file the petition for dissolution in the guardian's county of residence if the guardian has resided in that county for at least three (3) months immediately preceding the filing of the petition.**

SECTION 11. IC 31-15-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) A proceeding for legal separation is commenced by the filing of a petition entitled, "In Re the legal separation of \_\_\_\_\_ and \_\_\_\_\_". The petition must:

- (1) be verified; and
- (2) set forth the following:
  - (A) The residence of each party and the length of residence in



the state and county.

(B) The date of the marriage.

(C) The date on which the parties separated.

(D) The names, ages, and addresses of:

(i) any living child less than twenty-one (21) years of age;  
and

(ii) any incapacitated child;

of the marriage and whether the wife is pregnant.

(E) The grounds for legal separation.

(F) The relief sought.

**(G) If a guardian of an incapacitated person is filing the petition for legal separation on behalf of the incapacitated person, the name and address of the guardian.**

**(b) If a guardian of an incapacitated person files a petition for legal separation on behalf of the incapacitated person, the guardian shall file with the petition a copy of the court order granting authority to petition for legal separation described in IC 29-3-9-12.**

SECTION 12. IC 31-15-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) At the time of the filing of a petition for legal separation under section 4 of this chapter, at least one (1) of the parties must have been:

(1) a resident of Indiana; or

(2) stationed at a United States military installation within Indiana;

for six (6) months immediately preceding the filing of each petition.

**(b) Except as provided in subsection (c),** at the time of the filing of a petition for legal separation under section 4 of this chapter, at least one (1) of the parties must have been:

(1) a resident of the county; or

(2) stationed at a United States military installation within the county;

where the petition is filed for three (3) months immediately preceding the filing of the petition.

**(c) If a court has authorized a guardian to file an petition for legal separation under section 4 of this chapter on behalf of an incapacitated person under IC 29-3-9-12, the guardian may file the**



**petition in the guardian's county of residence if the guardian has resided in that county for at least three (3) months immediately preceding the filing of the petition."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 59 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 6, Nays 3.

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SENATE MOTION

Madam President: I move that Senate Bill 59 be amended to read as follows:

Page 6, line 25, delete "a preponderance of the" and insert "**clear and convincing**".

Page 6, between lines 34 and 35, begin a new paragraph and insert:

**"(f) In making a determination under subsection (e), the court shall consider the risk of harm to the incapacitated person's physical or mental health, safety, or property if the court does not grant the petition and authorize the guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the incapacitated person.**

**(g) In making a determination under subsection (e), the court shall also give appropriate weight to evidence of:**

- (1) the incapacitated person's intent or preferences; or**
- (2) a prior decision of the incapacitated person;**

**for or against a dissolution of marriage, a legal separation, or an annulment of marriage. The court may reduce the weight given to evidence of the intent, preferences, or prior decisions of the incapacitated person if the court concludes, from all of the relevant facts and circumstances, that the passage of time, the relevant circumstances at the time of a prior statement or action by the incapacitated person, or changed circumstances after a prior statement or action make the prior statement or action less reliable evidence of the incapacitated person's best interests and current preferences. The court may give no weight to evidence considered under this subsection that the court concludes is unreliable evidence of the incapacitated person's best interests and current preferences."**

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Page 6, line 35, delete "(f)" and insert "**(h)**".

Page 10, line 24, delete "an" and insert "**a**".

(Reference is to SB 59 as printed January 24, 2014.)

BRAY

