

# SENATE BILL No. 139

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 29-3; IC 33-24-6-14; IC 34-30-2-125.5.

**Synopsis:** Adult guardianship services. Instructs the office of judicial administration to establish and administer an office of adult guardianship services. Combines the volunteer advocates for seniors program and the volunteer advocates for incapacitated adults programs into one program. Requires that, in submitting a progress report to the court, a volunteer advocate for seniors and incapacitated adults shall include a person centered care plan in the progress report.

**Effective:** July 1, 2020.

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January 6, 2020, read first time and referred to Committee on Judiciary.

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Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

# SENATE BILL No. 139

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

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

- 1 SECTION 1. IC 29-3-1-15.5, AS AMENDED BY P.L.72-2010,
- 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2020]: Sec. 15.5. "Volunteer advocate for **seniors and**
- 4 incapacitated adults" means an individual who:
  - 5 (1) is a volunteer;
  - 6 (2) has completed a guardian training program approved by a
  - 7 court;
  - 8 (3) is supervised by a volunteer advocates for **seniors and**
  - 9 incapacitated adults program that is appointed by a court to serve
  - 10 as a guardian for **a senior or** an incapacitated person who is at
  - 11 least eighteen (18) years of age; and
  - 12 (4) provides reports and makes recommendations to a court.
- 13 SECTION 2. IC 29-3-1-16 IS REPEALED [EFFECTIVE JULY 1,
- 14 2020]. Sec. 16. "Volunteer advocate for seniors" means an individual
- 15 who:
  - 16 (1) is a volunteer;
  - 17 (2) has completed a guardian training program approved by a



- 1 court;
- 2 (3) is supervised by a volunteer advocates for seniors program
- 3 that is appointed by a court to serve as a guardian for an
- 4 incapacitated person who is at least fifty-five (55) years of age;
- 5 and
- 6 (4) provides reports and makes recommendations to a court.
- 7 SECTION 3. IC 29-3-1-17, AS ADDED BY P.L.72-2010,
- 8 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 9 JULY 1, 2020]: Sec. 17. "Volunteer advocates for **seniors and**
- 10 **incapacitated adults program**" means:
- 11 (1) an Indiana nonprofit or municipal corporation;
- 12 (2) a program of an Indiana nonprofit or municipal corporation;
- 13 or
- 14 (3) a program operated by a county or court;
- 15 that is appointed by a court to serve as a guardian for **a senior or** an
- 16 incapacitated person who is at least eighteen (18) years of age and
- 17 trains and supervises volunteers in a court approved guardian program
- 18 for seniors and incapacitated adults **and is certified by the Indiana**
- 19 **supreme court as a volunteer advocate for seniors and**
- 20 **incapacitated adults program.**
- 21 SECTION 4. IC 29-3-1-18 IS REPEALED [EFFECTIVE JULY 1,
- 22 2020]. Sec. 18. "Volunteer advocates for seniors program" means:
- 23 (1) an Indiana nonprofit or municipal corporation;
- 24 (2) a program of an Indiana nonprofit or municipal corporation;
- 25 or
- 26 (3) a program operated by a county or court;
- 27 that is appointed by a court to serve as a guardian for an incapacitated
- 28 person who is at least fifty-five (55) years of age and trains and
- 29 supervises volunteers in a court approved guardian program for
- 30 incapacitated persons who are at least fifty-five (55) years of age.
- 31 SECTION 5. IC 29-3-8.5-1, AS AMENDED BY P.L.72-2010,
- 32 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 33 JULY 1, 2020]: Sec. 1. A court in a proceeding under this article may
- 34 appoint a volunteer advocates for seniors ~~program or a volunteer~~
- 35 ~~advocates for~~ **and** incapacitated adults program.
- 36 SECTION 6. IC 29-3-8.5-2, AS AMENDED BY P.L.72-2010,
- 37 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 38 JULY 1, 2020]: Sec. 2. A volunteer advocates for seniors ~~program or~~
- 39 ~~a volunteer advocates for~~ **and** incapacitated adults program shall
- 40 submit to the court:
- 41 (1) a progress report thirty (30) days after the date of appointment
- 42 describing:



- 1 (A) the matters required by the court; and  
 2 (B) the:  
 3 (i) current physical and mental condition;  
 4 (ii) residential placement; ~~and~~  
 5 **(iii) person centered care plan; and**  
 6 ~~(iii)~~ (iv) property, and any property related issues;  
 7 of the senior or the incapacitated adult;  
 8 (2) a progress report sixty (60) days after the date of appointment:  
 9 (A) describing the matters required by the court; and  
 10 (B) that includes a verified inventory describing the property,  
 11 and any property related issues, of the incapacitated adult or  
 12 senior;  
 13 (3) a progress report or final report ninety (90) days after the date  
 14 of appointment:  
 15 (A) describing the matters required by the court; ~~and~~  
 16 **(B) describing the person centered care plan; and**  
 17 ~~(B)~~ (C) making recommendations to the court as to whether  
 18 the need continues to exist for the appointment of a guardian  
 19 of the incapacitated adult or senior;  
 20 (4) an annual progress report on the anniversary date of the  
 21 appointment if the appointment of the volunteer advocate is  
 22 continued by the court for more than one (1) year:  
 23 (A) describing the matters required by the court;  
 24 (B) describing the:  
 25 (i) current physical and mental condition;  
 26 (ii) residential placement; ~~and~~  
 27 **(iii) person centered care plan; and**  
 28 ~~(iii)~~ (iv) property, and any property related issues;  
 29 of the senior or the incapacitated adult; and  
 30 (C) making recommendations to the court as to whether the  
 31 need continues to exist for the appointment of a guardian of  
 32 the incapacitated adult or senior; and  
 33 (5) upon the death of the incapacitated person, a final report and  
 34 financial accounting:  
 35 (A) describing the incapacitated person's:  
 36 (i) final physical and mental condition;  
 37 (ii) cause of death;  
 38 (iii) last residential placement; and  
 39 (iv) final burial arrangements;  
 40 (B) stating the actions taken by the program regarding the:  
 41 (i) person's care and custody; and  
 42 (ii) preservation of the person's property;



1 (C) making recommendations to the court to close the  
2 guardianship of the person; and

3 (D) containing all other matters required by the court.

4 SECTION 7. IC 29-3-8.5-3, AS AMENDED BY P.L.72-2010,  
5 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
6 JULY 1, 2020]: Sec. 3. (a) A volunteer advocates for seniors ~~program~~  
7 ~~or a volunteer advocates for~~ **and** incapacitated adults program shall:

8 (1) serve as a guardian to represent and protect the best interests  
9 of an incapacitated person or senior including the person's  
10 property;

11 (2) investigate and gather information regarding the health,  
12 welfare, and financial circumstances of the incapacitated person  
13 or senior, as directed by a court;

14 (3) facilitate and authorize health care, social welfare, and  
15 residential placement services as needed by the incapacitated  
16 person or senior;

17 (4) advocate for the rights of the incapacitated person or senior;

18 (5) facilitate legal representation for the incapacitated person or  
19 senior;

20 (6) provide the court with the required reports under section 2 of  
21 this chapter; and

22 (7) perform any other responsibilities required by the court.

23 (b) A volunteer advocates for seniors ~~program~~ ~~or a volunteer~~  
24 ~~advocates for~~ **and** incapacitated adults program has the duties of the  
25 guardian of a minor listed in IC 29-3-8-1 and IC 29-3-8-3.

26 SECTION 8. IC 29-3-8.5-4, AS AMENDED BY P.L.83-2014,  
27 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
28 JULY 1, 2020]: Sec. 4. (a) A volunteer advocates for seniors ~~program~~  
29 ~~or a volunteer advocates for~~ **and** incapacitated adults program may:

30 (1) consent to ~~medical health care (as defined in IC 16-36-1-1)~~  
31 and other professional care and treatment for the incapacitated  
32 person's or senior's health and welfare;

33 (2) secure the appointment of a guardian or coguardian in another  
34 state;

35 (3) take custody of the incapacitated person or senior and  
36 establish the incapacitated person's or senior's residence within  
37 Indiana or another state in accordance with IC 29-3-9-2;

38 (4) institute proceedings or take other appropriate action to  
39 compel the performance by any person of a duty to support the  
40 incapacitated person's or senior's health or welfare;

41 (5) protect and preserve the property of the incapacitated person  
42 or senior and preserve any property in excess of the incapacitated



1 person's or senior's current needs;

2 (6) delegate to the incapacitated person or senior certain  
3 responsibilities for decisions affecting the incapacitated person's  
4 or senior's business affairs and well-being; and

5 (7) petition the court to request the authority to petition for  
6 dissolution of marriage, legal separation, or annulment of  
7 marriage on behalf of an incapacitated person as provided under  
8 IC 29-3-9-12.2.

9 (b) A volunteer advocates for seniors ~~program or a volunteer~~  
10 ~~advocates for and~~ incapacitated adults program may exercise the  
11 powers of a guardian of a minor listed in IC 29-3-8-2 and IC 29-3-8-4.

12 SECTION 9. IC 29-3-8.5-5, AS AMENDED BY P.L.72-2010,  
13 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
14 JULY 1, 2020]: Sec. 5. (a) If a court appoints a volunteer advocates for  
15 seniors ~~program or a volunteer advocates for and~~ incapacitated adults  
16 program, the initial appointment shall be for a period of ninety (90)  
17 days.

18 (b) After the initial ninety (90) day period, the court may, upon  
19 petition by the volunteer advocates for seniors ~~program or volunteer~~  
20 ~~advocates for and~~ incapacitated adults program or upon the court's own  
21 motion, extend the appointment for a period as determined by the court  
22 to be necessary to protect the best interests and property of the  
23 incapacitated person or senior.

24 SECTION 10. IC 29-3-8.5-6, AS AMENDED BY P.L.72-2010,  
25 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
26 JULY 1, 2020]: Sec. 6. A volunteer advocates for seniors ~~program or~~  
27 ~~a volunteer advocates for and~~ incapacitated adults program is  
28 considered an officer of the court for the purpose of representing the  
29 interests of an incapacitated person or senior.

30 SECTION 11. IC 29-3-8.5-7, AS AMENDED BY P.L.11-2006,  
31 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
32 JULY 1, 2020]: Sec. 7. The court may appoint an attorney to represent  
33 a volunteer advocate for seniors ~~or a volunteer advocate for and~~  
34 incapacitated adults.

35 SECTION 12. IC 29-3-8.5-8, AS AMENDED BY P.L.11-2006,  
36 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
37 JULY 1, 2020]: Sec. 8. Except for gross misconduct:

38 (1) a volunteer advocate for seniors ~~program or a volunteer~~  
39 ~~advocate for and~~ incapacitated adults program that;

40 (2) an employee of a volunteer advocates for seniors ~~program or~~  
41 ~~a volunteer advocate for and~~ incapacitated adults program who;  
42 or



1 (3) a volunteer for a volunteer advocates for seniors ~~program or~~  
 2 ~~a volunteer advocate for~~ **and** incapacitated adults program who;  
 3 performs duties in good faith is immune from any civil liability  
 4 resulting from the program's, employee's, or volunteer's performance.

5 SECTION 13. IC 29-3-8.5-9 IS REPEALED [EFFECTIVE JULY  
 6 1, 2020]. Sec. 9: A ~~volunteer advocates for seniors program or a~~  
 7 ~~volunteer advocates for incapacitated adults program under this chapter~~  
 8 ~~is not authorized to consent to or refuse health care (as defined in~~  
 9 ~~IC 16-36-1-1) for an individual if:~~

10 (1) a spouse; a parent; an adult child; or an adult sibling of the  
 11 individual or the individual's religious superior; if the individual  
 12 is a member of a religious order; is available; capable; and  
 13 suitable to consent to or refuse the health care on behalf of the  
 14 individual; or

15 (2) the individual has previously:

16 (A) appointed a health care representative under IC 16-36-1;

17 (B) authorized health care under IC 16-36-1.5; IC 16-36-4; or  
 18 IC 16-36-5;

19 (C) executed a power of attorney under IC 30-5-4; or

20 (D) had a guardian appointed by the court under IC 29-3.

21 SECTION 14. IC 29-3-8.5-9.5, AS ADDED BY P.L.72-2010,  
 22 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 JULY 1, 2020]: Sec. 9.5. IC 29-3-8-5 through IC 29-3-8-8 apply to a  
 24 volunteer advocates for seniors ~~program or a volunteer advocates for~~  
 25 **and** incapacitated adults program under this chapter.

26 SECTION 15. IC 29-3-8.5-10, AS ADDED BY P.L.72-2010,  
 27 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2020]: Sec. 10. (a) A volunteer advocates for seniors ~~program~~  
 29 ~~or a volunteer advocates for~~ **and** incapacitated adults program may  
 30 petition the court for reasonable compensation for services provided or  
 31 for expenditures made in good faith on behalf of the incapacitated adult  
 32 or senior.

33 (b) A court may grant reasonable compensation or expenditure  
 34 reimbursement to a volunteer advocates for seniors ~~program or a~~  
 35 ~~volunteer advocates for~~ **and** incapacitated adults program upon the  
 36 court's own motion.

37 SECTION 16. IC 29-3-8.5-11, AS ADDED BY P.L.72-2010,  
 38 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 2020]: Sec. 11. (a) Courts with probate jurisdiction that are  
 40 located in adjacent counties may establish joint or multiple county  
 41 volunteer advocates for seniors ~~programs or volunteer advocates for~~  
 42 **and** incapacitated adults programs.



1 (b) Courts with probate jurisdiction may contract with an Indiana  
 2 nonprofit or municipal corporation to provide volunteer advocates for  
 3 seniors ~~programs or volunteer advocates for~~ **and** incapacitated adults  
 4 programs.

5 SECTION 17. IC 29-3-8.5-12, AS ADDED BY P.L.72-2010,  
 6 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2020]: Sec. 12. (a) A volunteer advocates for seniors ~~program~~  
 8 ~~or volunteer advocates for~~ **and** incapacitated adults program that is a  
 9 program of an Indiana nonprofit corporation must establish policies and  
 10 procedures to avoid a conflict of interest if the nonprofit corporation is  
 11 also a provider of other necessary services to the incapacitated  
 12 individual.

13 (b) A volunteer advocates for seniors ~~program or volunteer~~  
 14 ~~advocates for~~ **and** incapacitated adults program to which subsection (a)  
 15 applies shall advise the court of the policies and procedures established  
 16 to avoid a conflict of interest in the petition to the court for  
 17 guardianship of the incapacitated individual.

18 SECTION 18. IC 29-3-9-2, AS AMENDED BY P.L.11-2006,  
 19 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2020]: Sec. 2. A guardian (other than a temporary guardian)  
 21 **or** a volunteer advocate for seniors ~~or a volunteer advocate for~~ **and**  
 22 incapacitated adults appointed under IC 29-3-8.5 may, with the  
 23 approval of and under such conditions as may be imposed by the court  
 24 after notice and hearing, change the physical presence of the protected  
 25 person to another place in Indiana or to another state if the court finds  
 26 that such a change is in the best interests of the protected person. Upon  
 27 such a change, the guardianship may be limited or terminated by the  
 28 court.

29 SECTION 19. IC 33-24-6-14 IS ADDED TO THE INDIANA  
 30 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 31 [EFFECTIVE JULY 1, 2020]: **Sec. 14. (a) The office of judicial**  
 32 **administration shall establish and administer an office of adult**  
 33 **guardianship services. The office of judicial administration shall**  
 34 **use money it receives from the state general fund to administer the**  
 35 **adult guardianship office. The office of judicial administration may**  
 36 **use its administrative fund to provide education, training, and**  
 37 **communication services for county courts and the volunteer**  
 38 **advocates for seniors and incapacitated adults programs. If funds**  
 39 **are appropriated by the general assembly, the office of judicial**  
 40 **administration shall provide matching funds to county courts that**  
 41 **implement and administer certified volunteer advocates for seniors**  
 42 **and incapacitated adults programs for incapacitated adults who**





1 are appointed a guardian under IC 29. Matching funds must be  
 2 distributed in accordance with the provisions of this section.

3 (b) Volunteer advocates for seniors and incapacitated adults  
 4 programs must be certified by the supreme court to be eligible to  
 5 receive matching funds.

6 (c) Matching funds shall be used for volunteer advocates for  
 7 seniors and incapacitated adults programs as defined under  
 8 IC 29-3.

9 (d) Volunteer advocates for seniors and incapacitated adults  
 10 programs that are eligible for matching funds shall provide a local  
 11 match of fifty percent (50%) of the funds provided by the office of  
 12 judicial administration. The local matching funds shall consist of:

13 (1) a minimum of fifty percent (50%) county funds or funds  
 14 from other local county resources; and

15 (2) a maximum of fifty percent (50%) local in kind resources.

16 (e) Money designated by the office of judicial administration as  
 17 matching funds that is not distributed before June 30 of each fiscal  
 18 year does not revert, but shall be redistributed on July 1 among the  
 19 county courts providing certified volunteer advocates for seniors  
 20 and incapacitated adults programs.

21 (f) Money appropriated to the office of judicial administration  
 22 to establish and administer the office of adult guardianship services  
 23 and provide matching funds to county courts with a certified  
 24 volunteer advocates for seniors and incapacitated adults program  
 25 does not revert to the state general fund at the end of the state  
 26 fiscal year.

27 SECTION 20. IC 34-30-2-125.5, AS AMENDED BY P.L.11-2006,  
 28 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29 JULY 1, 2020]: Sec. 125.5. IC 29-3-8.5-8 (Concerning a volunteer  
 30 advocate for seniors or a volunteer advocate for and incapacitated  
 31 adults).

