



January 31, 2020

SENATE BILL No. 139

DIGEST OF SB 139 (Updated January 29, 2020 11:35 am - DI 128)

Citations Affected: IC 29-3; IC 34-30.

Synopsis: 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.

**Lanane, Becker, Koch, Stoops, Buck,
Freeman, Rogers, Glick,
Randolph Lonnie M**

January 6, 2020, read first time and referred to Committee on Judiciary.
January 30, 2020, amended, reported favorably — Do Pass.

SB 139—LS 6270/DI 128



January 31, 2020

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 IC 29-3-1-16 IS REPEALED [EFFECTIVE JULY 1,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~~

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



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 139, 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 7, delete lines 29 through 42.

Page 8, delete lines 1 through 26.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 139 as introduced.)

KOCH, Chairperson

Committee Vote: Yeas 10, Nays 0.

