

SENATE BILL No. 380

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-3; IC 34-30-2-126.8.

Synopsis: Supported decision making. Requires that a person who files a petition for the appointment of a guardian for an incapacitated person or minor must inform the court what less restrictive alternatives were considered or implemented and, if less restrictive alternatives were not considered or implemented, the reason for the failure to consider or implement less restrictive alternatives. Provides for the use of supported decision making agreements for adults who need support and accommodations in making, communicating, and effectuating decisions.

Effective: July 1, 2019.

Koch

January 14, 2019, read first time and referred to Committee on Judiciary.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 380

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 29-3-1-7.8 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2019]: **Sec. 7.8. (a) "Less restrictive alternatives" means an**
4 **approach to meeting a person's needs that restricts fewer rights of**
5 **the person than would the appointment of the guardian.**
6 **(b) Less restrictive alternatives may include, but are not limited**
7 **to, the following:**
8 **(1) A supported decision making agreement (as defined in**
9 **IC 29-3-14-2).**
10 **(2) Appropriate technological assistance.**
11 **(3) The appointment of a representative payee.**
12 **(4) The appointment of a health care representative (as**
13 **defined in IC 16-36-1-2).**
14 **(5) The appointment of a power of attorney (as defined in**
15 **IC 30-5-2-7).**
16 SECTION 2. IC 29-3-5-1, AS AMENDED BY P.L.162-2011,
17 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2019]: Sec. 1. (a) Any person may file a petition for the
 2 appointment of a person to serve as guardian for an incapacitated
 3 person or minor under this chapter or to have a protective order issued
 4 under IC 29-3-4. The petition must state the following:

5 (1) The name, age, residence, and post office address of the
 6 alleged incapacitated person or minor for whom the guardian is
 7 sought to be appointed or the protective order issued.

8 (2) The nature of the incapacity.

9 (3) The approximate value and description of the property of the
 10 incapacitated person or minor, including any compensation,
 11 pension, insurance, or allowance to which the incapacitated
 12 person or minor may be entitled.

13 (4) If a limited guardianship is sought, the particular limitations
 14 requested.

15 (5) Whether a protective order has been issued or a guardian has
 16 been appointed or is acting for the incapacitated person or minor
 17 in any state.

18 (6) The residence and post office address of the proposed
 19 guardian or person to carry out the protective order and the
 20 relationship to the alleged incapacitated person of:

21 (A) the proposed guardian; or

22 (B) the person proposed to carry out the protective order.

23 (7) The names and addresses, as far as known or as can
 24 reasonably be ascertained, of the persons most closely related by
 25 blood or marriage to the person for whom the guardian is sought
 26 to be appointed or the protective order is issued.

27 (8) The name and address of the person or institution having the
 28 care and custody of the person for whom the guardian is sought
 29 to be appointed or the protective order is issued.

30 (9) The names and addresses of any other incapacitated persons
 31 or minors for whom the proposed guardian or person to carry out
 32 the protective order is acting if the proposed guardian or person
 33 is an individual.

34 (10) The reasons the appointment of a guardian or issuance of a
 35 protective order is sought and the interest of the petitioner in the
 36 appointment or issuance.

37 **(11) A description of the petitioner's efforts to use less**
 38 **restrictive alternatives before seeking guardianship,**
 39 **including:**

40 **(A) the less restrictive alternatives for meeting the alleged**
 41 **incapacitated person's needs that were considered or**
 42 **implemented;**



1 **(B) if a less restrictive alternative was not considered or**
 2 **implemented, the reason that the less restrictive alternative**
 3 **was not considered or implemented; and**

4 **(C) the reason a less restrictive alternative is insufficient to**
 5 **meet the needs of the alleged incapacitated person.**

6 ~~(11)~~ **(12)** The name and business address of the attorney who is
 7 to represent the guardian or person to carry out the protective
 8 order.

9 ~~(12)~~ **(13)** Whether a child in need of services petition or a
 10 program of informal adjustment has been filed regarding the
 11 minor for whom a guardianship is being sought, and, if so,
 12 whether the case regarding the minor is open at the time the
 13 guardianship petition is filed.

14 (b) Notice of a petition under this section for the appointment of a
 15 guardian or the issuance of a protective order and the hearing on the
 16 petition shall be given under IC 29-3-6.

17 (c) After the filing of a petition, the court shall set a date for a
 18 hearing on the issues raised by the petition. Unless an alleged
 19 incapacitated person is already represented by counsel, the court may
 20 appoint an attorney to represent the incapacitated person.

21 (d) A person alleged to be an incapacitated person must be present
 22 at the hearing on the issues raised by the petition and any response to
 23 the petition unless the court determines by evidence that:

24 (1) it is impossible or impractical for the alleged incapacitated
 25 person to be present due to the alleged incapacitated person's
 26 disappearance, absence from the state, or similar circumstance;

27 (2) it is not in the alleged incapacitated person's best interest to be
 28 present because of a threat to the health or safety of the alleged
 29 incapacitated person as determined by the court;

30 (3) the incapacitated person has knowingly and voluntarily
 31 consented to the appointment of a guardian or the issuance of a
 32 protective order and at the time of such consent the incapacitated
 33 person was not incapacitated as a result of a mental condition that
 34 would prevent that person from knowingly and voluntarily
 35 consenting; or

36 (4) the incapacitated person has knowingly and voluntarily
 37 waived notice of the hearing and at the time of such waiver the
 38 incapacitated person was not incapacitated as a result of a mental
 39 condition that would prevent that person from making a knowing
 40 and voluntary waiver of notice.

41 (e) A person alleged to be an incapacitated person may present
 42 evidence and cross-examine witnesses at the hearing. The issues raised



1 by the petition and any response to the petition shall be determined by
 2 a jury if a jury is requested no later than seventy-two (72) hours prior
 3 to the original date and time set for the hearing on the petition.
 4 However, in no event may a request for a jury trial be made after thirty
 5 (30) days have passed following the service of notice of a petition.

6 (f) Any person may apply for permission to participate in the
 7 proceeding, and the court may grant the request with or without hearing
 8 upon determining that the best interest of the alleged incapacitated
 9 person or minor will be served by permitting the applicant's
 10 participation. The court may attach appropriate conditions to the
 11 permission to participate.

12 (g) A court shall notify the department of child services of a hearing
 13 regarding the guardianship of a minor under this section if a:

- 14 (1) child in need of services petition has been filed regarding the
 15 minor; or
 16 (2) program of informal adjustment involving the minor is
 17 pending.

18 The department of child services may participate in a hearing regarding
 19 the guardianship of a minor described in this subsection.

20 SECTION 3. IC 29-3-9-6, AS AMENDED BY P.L.99-2013,
 21 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2019]: Sec. 6. (a) Unless otherwise directed by the court, a
 23 guardian (other than a temporary guardian) shall file with the court:

- 24 (1) at least biennially, not more than thirty (30) days after the
 25 anniversary date of the guardian's appointment; and
 26 (2) not more than thirty (30) days after the termination of the
 27 appointment;

28 a written verified account of the guardian's administration.

29 (b) A temporary guardian shall file with the court, within thirty (30)
 30 days after the termination of the temporary guardian's appointment, and
 31 otherwise as ordered by the court, a written verified account of the
 32 temporary guardian's administration.

33 (c) A written verified account required under this section must
 34 include the incapacitated person's or minor's current residence and a
 35 description of the condition and circumstances of the incapacitated
 36 person or minor, **including a specific showing of whether**
 37 **guardianship is still necessary and appropriate, and whether any**
 38 **less restrictive alternatives have been considered or implemented.**

39 (d) The court shall conduct a hearing on each verified account filed
 40 under this section. The court shall give notice to each person entitled
 41 to receive notice that an accounting has been filed and will be acted
 42 upon by the court on the date set unless written objections are



1 presented to the court on or before that date. The court shall give the
2 notice required by this subsection, unless waived, to the following:

3 (1) The protected person, unless waived by the court. If notice to
4 the protected person is waived, the court shall give notice to a
5 person who is not the guardian of the protected person in the
6 following priority:

7 (A) The protected person's spouse.

8 (B) An adult child of the protected person.

9 (C) A parent of the protected person.

10 (D) A guardian ad litem appointed by the court under
11 subsection (e).

12 (2) In the case of a protected person who has died, the personal
13 representative of the estate of the protected person, if any.

14 (3) Any other persons that the court directs.

15 (e) The court may appoint a guardian ad litem to review on behalf
16 of a protected person an accounting filed under this section if:

17 (1) the protected person does not have a spouse, an adult child, or
18 a parent; or

19 (2) the same individual:

20 (A) served as the protected person's guardian before the death
21 of the protected person; and

22 (B) is the personal representative of the protected person's
23 estate.

24 (f) When an account other than an account in final settlement is
25 filed, the court may approve the same ex parte, but the account may be
26 reviewed by the court at any subsequent time and does not become
27 final until an account in final settlement is approved by the court after
28 notice and hearing.

29 (g) When notice of hearing has been given under this section, the
30 order of the court approving the intermediate account or the final
31 account is binding upon all persons.

32 (h) When a guardian files with the court proper receipts or other
33 evidence satisfactory to the court showing that the guardian has
34 delivered to the appropriate persons all the property for which the
35 guardian is accountable as guardian, the court shall enter an order of
36 discharge. The order of discharge operates as a release from the duties
37 of the guardian's office that have not yet terminated and operates as a
38 bar to any suit against the guardian and the guardian's sureties, unless
39 the suit is commenced within one (1) year from the date of the
40 discharge.

41 SECTION 4. IC 29-3-14 IS ADDED TO THE INDIANA CODE AS
42 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2019]:

2 **Chapter 14. Supported Decision Making**

3 **Sec. 1. As used in this chapter, "supported decision making"**
 4 **refers to the process of supporting and accommodating an adult in**
 5 **the decision making process to make, communicate, and effectuate**
 6 **life decisions, without impeding the self-determination of the adult.**

7 **Sec. 2. As used in this chapter, "supported decision making**
 8 **agreement" means a document that outlines the decision making**
 9 **supports and accommodations the adult chooses to receive from**
 10 **one (1) or more supporters.**

11 **Sec. 3. As used in this chapter, "supporter" means a person at**
 12 **least eighteen (18) years of age who has voluntarily agreed to assist**
 13 **an adult in the decision making process as outlined in the adult's**
 14 **supported decision making agreement.**

15 **Sec. 4. (a) An adult may not enter into a supported decision**
 16 **making agreement unless the adult:**

17 (1) enters into the agreement voluntarily and without coercion
 18 or undue influence; and

19 (2) understands the nature and effect of the agreement.

20 (b) An adult may make, change, or revoke a supported decision
 21 making agreement even if the adult does not have the capacity to:

22 (1) enter into a contract; or

23 (2) independently manage the adult's health care, legal
 24 matters, or financial affairs.

25 (c) A court may not consider the manner in which an adult
 26 communicates with others when making a determination that the
 27 adult is incapable of making, changing, or revoking a supported
 28 decision making agreement.

29 (d) A court may not consider an adult's execution of a supported
 30 decision making agreement as evidence of incapacity. The existence
 31 of an executed supported decision making agreement does not
 32 preclude the adult from acting independently of the supported
 33 decision making agreement.

34 (e) An adult may not enter into a supported decision making
 35 agreement under this section if the agreement supplants the
 36 authority of a guardian of the adult, unless the guardian consents
 37 in writing to the adult entering into the supported decision making
 38 agreement.

39 **Sec. 5. (a) A supporter must:**

40 (1) support the will and preference of the adult, and not the
 41 supporter's opinion of the adult's best interests;

42 (2) act honestly, diligently, and in good faith;



- 1 (3) act within the scope set forth in the adult's supported
2 decision making agreement;
3 (4) avoid conflicts of interest; and
4 (5) notify the adult in writing of the supporter's intent to
5 resign as a supporter.
- 6 (b) The relationship between an adult and a supporter is one of
7 trust and confidence, and serves to preserve the decision making
8 authority of the adult.
- 9 (c) A supporter is prohibited from:
10 (1) exerting undue influence upon the adult;
11 (2) receiving a fee for service related solely to services
12 performed in the role of supporter;
13 (3) obtaining, without the consent of the adult, information
14 acquired for a purpose other than assisting the adult in
15 making a specific decision authorized by the supported
16 decision making agreement; or
17 (4) acting outside the scope of authority provided in the
18 supported decision making agreement.
- 19 (d) A supporter is not a surrogate decision maker for the adult
20 and does not have the authority to sign legal documents on behalf
21 of the adult or bind the adult to a legal agreement unless expressly
22 specified in a separate legal document.
- 23 Sec. 6. A request or decision made or communicated with the
24 assistance of a supporter in conformity with this chapter shall be
25 recognized as the request or decision of the adult for the purposes
26 of any provision of law.
- 27 Sec. 7. (a) A supported decision making agreement must:
28 (1) name at least one (1) supporter;
29 (2) describe the decision making assistance that each
30 supporter may provide to the adult and how supporters may
31 work together; and
32 (3) if appropriate, be executed by the adult's guardian.
- 33 (b) A supported decision making agreement may:
34 (1) appoint more than one (1) supporter;
35 (2) appoint an alternate to act in the place of a supporter
36 under circumstances specified in the agreement; or
37 (3) authorize a supporter to share information with any other
38 supporter or others named in the agreement.
- 39 (c) A supported decision making agreement must be:
40 (1) in writing;
41 (2) dated; and
42 (3) signed by the adult in the presence of a notary.



1 (d) A supported decision making agreement must contain a
2 separate consent signed by each supporter named in the agreement
3 indicating the supporter's:

- 4 (1) relationship to the adult;
5 (2) willingness to act as a supporter; and
6 (3) acknowledgment of the duties of a supporter.

7 Sec. 8. An adult may revoke a supported decision making
8 agreement at any time. A revocation under this section must be in
9 writing, and a copy of the revocation must be provided to each
10 supporter.

11 Sec. 9. Except as provided in the supported decision making
12 agreement, a supported decision making agreement terminates in
13 the following situations:

- 14 (1) The adult subject of the supported decision making
15 agreement dies.
16 (2) The adult subject of the supported decision making
17 agreement revokes the agreement under section 8 of this
18 chapter.
19 (3) The named supporters withdraw their participation
20 without naming successor supporters.
21 (4) A court of competent jurisdiction determines that the
22 adult does not have capacity to execute or consent to a
23 supported decision making agreement.

24 Sec. 10. A supported decision making agreement that complies
25 with section 7 of this chapter is presumed valid. A party may rely
26 on the presumption of validity unless the party has actual
27 knowledge that the supported decision making agreement was not
28 validly executed.

29 Sec. 11. (a) Except as provided in subsection (c), a person who,
30 in good faith, relies on an authorization in a supported decision
31 making agreement or who, in good faith, declines to honor an
32 authorization in a supported decision making agreement is not
33 subject to civil or criminal liability or to discipline for
34 unprofessional conduct.

35 (b) Except as provided in subsection (c), a supporter who
36 performs supported decision making in good faith as specified in
37 a supported decision making agreement is immune from civil or
38 criminal liability resulting from the adult's decision.

39 (c) This section does not apply to a person whose act or omission
40 amounts to fraud, misrepresentation, gross negligence, or willful
41 or wanton misconduct.

42 Sec. 12. The meaning and effect of a supported decision making



1 agreement is determined by the law of the jurisdiction in which the
2 supported decision making agreement was executed, unless the
3 supported decision making agreement provides otherwise.

4 **Sec. 13. A person who:**

5 (1) receives a copy of a supported decision making agreement;
6 or

7 (2) is aware of the existence of a supported decision making
8 agreement;

9 and reasonably believes that an adult is being abused, neglected, or
10 exploited must report the alleged abuse, neglect, or exploitation to
11 adult protective services or another authorized law enforcement
12 agency.

13 **Sec. 14. A court may limit or abrogate a decision made using**
14 **supported decision making if the court determines that the adult**
15 **lacks the capacity to engage in the making of a specific decision**
16 **with the assistance of a supporter under the supported decision**
17 **making agreement.**

18 SECTION 5. IC 34-30-2-126.8 IS ADDED TO THE INDIANA
19 CODE AS A NEW SECTION TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2019]: **Sec. 126.8. IC 29-3-14-11 (Concerning**
21 **supported decision making agreements).**

