



January 27, 2016

SENATE BILL No. 331

DIGEST OF SB 331 (Updated January 25, 2016 12:52 pm - DI 106)

Citations Affected: IC 29-3; IC 33-23; IC 35-47.

Synopsis: Adult permanent guardianship cases. Provides that, in a proceeding on a petition for adult permanent guardianship, if the court finds that the appointment of a guardian is necessary and the person subject to the guardianship is a "mental defective" under federal law, the court shall transmit to the division of state court administration certain information for transmission to the National Instant Criminal Background Check System maintained by the Federal Bureau of Investigation in accordance with the federal Brady Handgun Violence Prevention Act. Makes corresponding amendments.

Effective: July 1, 2016.

Zakas, Hershman, Taylor, Broden

January 7, 2016, read first time and referred to Committee on Civil Law.
January 26, 2016, amended, reported favorably — Do Pass.

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January 27, 2016

Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

SENATE BILL No. 331

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

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

- 1 SECTION 1. IC 29-3-5-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) Except under subsection (c),
3 if it is alleged and the court finds that:
4 (1) the individual for whom the guardian is sought is an
5 incapacitated person or a minor; and
6 (2) the appointment of a guardian is necessary as a means of
7 providing care and supervision of the physical person or property
8 of the incapacitated person or minor;
9 the court shall appoint a guardian under this chapter.
10 (b) If it is alleged and the court finds that the welfare of an
11 incapacitated person would be best served by limiting the scope of the
12 guardianship, the court shall make the appointive or other orders under
13 this chapter to:
14 (1) encourage development of the incapacitated person's
15 self-improvement, self-reliance, and independence; and
16 (2) contribute to the incapacitated person's living as normal a life
17 as that person's condition and circumstances permit without

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1 psychological or physical harm to the incapacitated person.

2 (c) If the court finds that it is not in the best interests of the
3 incapacitated person or minor to appoint a guardian, the court may:

- 4 (1) treat the petition as one for a protective order and proceed
5 accordingly;
6 (2) enter any other appropriate order; or
7 (3) dismiss the proceedings.

8 **(d) If the court makes a finding under subsection (a) on a**
9 **petition for adult permanent guardianship and the incapacitated**
10 **person is found to be a mental defective (as defined in 18 U.S.C.**
11 **922(g) and 27 CFR 478.11), the court shall transmit any**
12 **information required by the division of state court administration**
13 **to the division of state court administration for transmission to the**
14 **NICS (as defined in IC 35-47-2.5-2.5) in accordance with**
15 **IC 33-24-6-3.**

16 SECTION 2. IC 33-23-15-1, AS ADDED BY P.L.110-2009,
17 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2016]: Sec. 1. This chapter applies to the following:

- 19 (1) A person civilly committed under IC 12-26-6-8.
20 (2) A person found to be mentally ill and either dangerous or
21 gravely disabled under IC 12-26-7-5.
22 (3) A person found guilty but mentally ill under IC 35-36-2-5.
23 (4) A person found not responsible by reason of insanity under
24 IC 35-36-2-4.
25 (5) A person found incompetent to stand trial under IC 35-36-3-1.
26 (6) A confined offender who is determined to be mentally ill and
27 has been involuntarily transferred to and accepted by the division
28 of mental health and addiction under IC 11-10-4-3.

29 **(7) A person found to be a mental defective (as defined in 18**
30 **U.S.C. 922(g) and 27 CFR 478.11) under IC 29-3-5-3(d).**

31 SECTION 3. IC 35-47-1-7, AS AMENDED BY P.L.126-2012,
32 SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2016]: Sec. 7. "Proper person" means a person who:

- 34 (1) does not have a conviction for resisting law enforcement
35 under IC 35-44.1-3-1 within five (5) years before the person
36 applies for a license or permit under this chapter;
37 (2) does not have a conviction for a crime for which the person
38 could have been sentenced for more than one (1) year;
39 (3) does not have a conviction for a crime of domestic violence
40 (as defined in IC 35-31.5-2-78), unless a court has restored the
41 person's right to possess a firearm under IC 35-47-4-7;
42 (4) is not prohibited by a court order from possessing a handgun;



- 1 (5) does not have a record of being an alcohol or drug abuser as
 2 defined in this chapter;
 3 (6) does not have documented evidence which would give rise to
 4 a reasonable belief that the person has a propensity for violent or
 5 emotionally unstable conduct;
 6 (7) does not make a false statement of material fact on the
 7 person's application;
 8 (8) does not have a conviction for any crime involving an inability
 9 to safely handle a handgun;
 10 (9) does not have a conviction for violation of the provisions of
 11 this article within five (5) years of the person's application;
 12 (10) does not have an adjudication as a delinquent child for an act
 13 that would be a felony if committed by an adult, if the person
 14 applying for a license or permit under this chapter is less than
 15 twenty-three (23) years of age;
 16 (11) has not been involuntarily committed, other than a temporary
 17 commitment for observation or evaluation, to a mental institution
 18 by a court, board, commission, or other lawful authority;
 19 (12) has not been the subject of a:
 20 (A) ninety (90) day commitment as a result of proceeding
 21 under IC 12-26-6; or
 22 (B) regular commitment under IC 12-26-7; ~~or~~
 23 (13) has not been found by a court to be mentally incompetent,
 24 including being found:
 25 (A) not guilty by reason of insanity;
 26 (B) guilty but mentally ill; or
 27 (C) incompetent to stand trial; **or**
 28 **(14) has not been found to be a mental defective (as defined in**
 29 **18 U.S.C. 922(g) and 27 CFR 478.11) under IC 29-3-5-3(d).**



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 331, 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 2, line 9, delete "guardianship," and insert "**guardianship and the incapacitated person is found to be a mental defective (as defined in 18 U.S.C. 922(g) and 27 CFR 478.11)**,".

Page 2, line 27, delete "subject to an adult permanent guardianship" and insert "**found to be a mental defective (as defined in 18 U.S.C. 922(g) and 27 CFR 478.11) under IC 29-3-5-3(d)**,".

Page 2, delete line 28.

Page 3, line 26, delete "under IC 29-3-5-3 to be an" and insert "**to be a mental defective (as defined in 18 U.S.C. 922(g) and 27 CFR 478.11) under IC 29-3-5-3(d)**,".

Page 3, delete lines 27 through 29.

and when so amended that said bill do pass.

(Reference is to SB 331 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 0.

