

IC 29-3-2

Chapter 2. General Provisions

IC 29-3-2-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to sections 3 and 4 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

(2) The amendments made to section 1 of this chapter by P.L.217-2001 apply to all proceedings pending under IC 31-34 on July 1, 2001, and to all proceedings commenced under IC 31-34 after June 30, 2001.

As added by P.L.220-2011, SEC.480.

IC 29-3-2-0.2

Application of article; effect of amendments to certain other statutes

Sec. 0.2. (a) As used in this section, "affected statutes" refers to the following:

(1) IC 16-8-12-7 (repealed, now codified at IC 16-36-1-8).

(2) IC 29-1-7.5-2.

(3) IC 33-16-2-2 (repealed, now codified at IC 33-42-2-2).

(4) IC 33-19-3-2 (repealed, now codified at IC 33-37-3-2).

(5) IC 35-34-2-3.

(6) IC 35-37-1-5.

(b) This article and the amendments made by P.L.169-1988 to the affected statutes apply to guardianships in existence on June 30, 1989, except to the extent that application of this article and the amendments made by P.L.169-1988 to the affected statutes would contravene any vested or contractual rights in effect on June 30, 1989, in which case the law in effect before July 1, 1989, prevails.

As added by P.L.220-2011, SEC.481.

IC 29-3-2-1

Application of article; jurisdiction of courts

Sec. 1. (a) This article applies to the following:

(1) The business affairs, physical person, and property of every incapacitated person and minor residing in Indiana.

(2) Property located in Indiana of every incapacitated person and minor residing outside Indiana.

(3) Property of every incapacitated person or minor, regardless of where the property is located, coming into the control of a fiduciary who is subject to the laws of Indiana.

(b) Except as provided in subsections (c) through (e), the court has exclusive original jurisdiction with respect to an individual who is not an adult (as defined in IC 29-3.5-1-2(1)) over all matters concerning the following:

(1) Guardians.

(2) Protective proceedings under IC 29-3-4.

In the case of an adult (as defined in IC 29-3.5-1-2(1)), a court must establish jurisdiction concerning a guardianship or a protective proceeding in accordance with IC 29-3.5-2.

(c) A juvenile court has exclusive original jurisdiction over matters relating to the following:

(1) Minors described in IC 31-30-1-1.

(2) Matters related to guardians of the person and guardianships of the person described in IC 31-30-1-1(10).

(d) Except as provided in subsection (c), courts with child custody jurisdiction under:

(1) IC 31-14-10;

(2) IC 31-17-2-1; or

(3) IC 31-21-5 (or IC 31-17-3-3 before its repeal);

have original and continuing jurisdiction over custody matters relating to minors.

(e) A mental health division of a superior court under IC 33-33-49 has jurisdiction concurrent with the court in mental health proceedings under IC 12-26 relating to guardianship and protective orders.

(f) Jurisdiction under this section is not dependent on issuance or service of summons.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.61; P.L.1-1990, SEC.275; P.L.2-1992, SEC.792; P.L.16-1995, SEC.5; P.L.1-1997, SEC.118; P.L.217-2001, SEC.1; P.L.98-2004, SEC.100; P.L.138-2007, SEC.4; P.L.178-2011, SEC.1.

IC 29-3-2-2

Venue for appointment of guardian; stay of proceedings; transfer of proceedings

Sec. 2. (a) The venue for the appointment of a guardian or for protective proceedings is as follows:

(1) If the alleged incapacitated person or minor resides in Indiana, venue is:

(A) in the county where the alleged incapacitated person or minor resides; or

(B) if the proceeding is for the appointment of a temporary guardian of the person for an alleged incapacitated person or minor who is in need of medical care, in the county where a facility is located that is providing or attempting to provide medical care to the alleged incapacitated person or minor.

(2) If the alleged incapacitated person or minor does not reside in Indiana, then venue is in any county where any property of the alleged incapacitated person or minor is located. However, if the proceeding is for the appointment of a temporary guardian of the person for an alleged incapacitated person or minor who is in need of medical care, venue is in the county where the facility providing or attempting to provide medical care is located.

(3) If the alleged incapacitated person is an adult (as defined in

IC 29-3.5-1-2(1)), venue is determined under the laws of the state or country having jurisdiction under IC 29-3.5-2. However, if a court in Indiana has jurisdiction under IC 29-3.5-2, the rules for determining venue set forth in this section apply.

(b) If proceedings are commenced in more than one (1) county, they shall be stayed except in the county where first commenced until final determination of the proper venue by the court in the county where first commenced. After proper venue has been determined, all proceedings in any county other than the county where jurisdiction has been finally determined to exist shall be dismissed. If the proper venue is finally determined to be in another county, the court shall transmit the original file to the proper county. The proceedings shall be commenced by the filing of a petition with the court, and the proceeding first commenced extends to all of the property of the minor or the incapacitated person unless otherwise ordered by the court.

(c) If it appears to the court at any time that:

- (1) the proceeding was commenced in the wrong county;
- (2) the residence of the incapacitated person or the minor has been changed to another county;
- (3) the proper venue is determined to be otherwise under the Indiana Rules of Trial Procedure; or
- (4) it would be in the best interest of the incapacitated person or the minor and the property of the minor or the incapacitated person;

the court may order the proceeding, together with all papers, files, and a certified copy of all orders, transferred to another court in Indiana. That court shall complete the proceeding as if originally commenced in that court. The court may in like manner transfer a guardianship or protective proceeding in Indiana to a court outside Indiana if the other court assumes jurisdiction to complete the proceeding as if originally commenced in that court. Before any transfer is made under this subsection, a hearing pursuant to notice shall be held in the same manner as provided with respect to the appointment of a guardian.

(d) Where a guardian has been appointed by a court that does not have probate jurisdiction, the matter shall be transferred in accordance with the proper venue to a court having probate jurisdiction for qualification of the guardian and for further proceedings in the guardianship.

(e) Nothing in this section shall be construed as a requirement of jurisdiction.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.62; P.L.178-2011, SEC.2.

IC 29-3-2-3

Guardian ad litem; appointment

Sec. 3. (a) Unless waived under subsection (b) or if section 4 of this chapter does not apply, the court shall appoint a guardian ad

litem to represent the interests of the alleged incapacitated person or minor if the court determines that the alleged incapacitated person or minor is not represented or is not adequately represented by counsel. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The court as part of the record of the proceeding shall set out its reasons for appointing a guardian ad litem.

(b) If a minor has or is entitled to property for the preservation of which the appointment of a guardian is necessary, and the court makes written findings that:

- (1) the proposed guardian is capable of representing and managing the minor's property;
- (2) no other petition for the appointment of a guardian has been filed; and
- (3) the petition for the appointment of the proposed guardian is uncontested;

the court may waive the appointment of a guardian ad litem for the minor.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.63; P.L.154-1990, SEC.12; P.L.118-1997, SEC.25.

IC 29-3-2-4

Discretion of court; binding orders

Sec. 4. (a) All findings, orders, or other proceedings under this article shall be in the discretion of the court unless otherwise provided in this article.

(b) If there is not a conflict of interest between a guardian of an estate and the protected person or among persons represented, orders binding a guardian of an estate bind the protected person.

(c) Orders binding a guardian of the person bind the ward if a guardian of the ward's estate has not been appointed.

As added by P.L.169-1988, SEC.1. Amended by P.L.118-1997, SEC.26; P.L.252-2001, SEC.25.

IC 29-3-2-5

Residence; determination

Sec. 5. The residence of a person shall be determined by actual presence rather than technical domicile.

As added by P.L.169-1988, SEC.1.

IC 29-3-2-6

Application of decedents' estates law to guardianships and protected persons

Sec. 6. (a) The applicable rules regarding decedents' estates in IC 29-1-7 through IC 29-1-17 apply to guardianships and protective proceedings under IC 29-3-4 when consistent with this article and IC 29-1-19.

(b) IC 29-1-1-6 through IC 29-1-1-7, IC 29-1-1-9 through IC 29-1-1-10, IC 29-1-1-12 through IC 29-1-1-14, IC 29-1-1-16 through IC 29-1-1-18, and IC 29-1-1-20 through IC 29-1-1-24 apply

to guardianships under this article and IC 29-1-19.

(c) This article extends to persons specifically provided for under IC 29-1-19. The provisions of this article are cumulative to the provisions of IC 29-1-19. A conflict arising between this article and IC 29-1-19 is resolved by giving effect to the law stated in IC 29-1-19 in cases to which it applies.

(d) The provisions of IC 29-1-15 concerning the sale of decedents' property apply to the sale of protected persons' property.

(e) The provisions of IC 29-1-16 concerning accounting in decedents' estates apply to accounting in protected persons' estates that are consistent with this article.

(f) The provisions of IC 29-1-14-2, IC 29-1-14-10, IC 29-1-14-11, IC 29-1-14-12, IC 29-1-14-13, and IC 29-1-14-17 concerning claims against decedents' estates apply to claims against protected persons' estates.

As added by P.L.264-1989, SEC.3.

IC 29-3-2-7

Submissions to the court; court requests for information

Sec. 7. (a) If a person files a petition to establish or modify guardianship of a minor, any person who:

- (1) is a party to the guardianship proceeding; and
- (2) has knowledge that:

- (A) a party to the guardianship proceeding has been determined to be a perpetrator of a substantiated report of child abuse or neglect;
- (B) the child named in the petition has been the subject of a substantiated report of child abuse or neglect;
- (C) the child named in the petition has been determined to be a child in need of services under IC 31-34; or
- (D) the child named in the petition has been involved in an informal adjustment under IC 31-34-8;

shall submit to the court in writing under seal that a party to the guardianship proceeding is a person described in subdivision (2)(A) or the child named in the petition is a child described in subdivision (2)(B), (2)(C), or (2)(D).

(b) A court reviewing a petition to establish or modify a guardianship may request information from the department of child services regarding a petition or proceeding described in subsection (a)(2). The department shall provide a response under seal to the court's request for information not later than ten (10) days after the department receives the court's request for the information.

As added by P.L.239-2013, SEC.1.