

1 A bill to be entitled

2 An act relating to guardians for dependent children
3 who are developmentally disabled or incapacitated;
4 amending s. 39.6251, F.S.; requiring the continued
5 review of the necessity of guardianships for young
6 adults; amending s. 39.701, F.S.; requiring an updated
7 case plan developed in a face-to-face conference with
8 the child, if appropriate, and other specified
9 persons; providing requirements for the Department of
10 Children and Families when a court determines that
11 there is a good faith basis to appoint a guardian
12 advocate, limited guardian, or plenary guardian for
13 the child and that no less restrictive decisionmaking
14 assistance will meet the child's needs; requiring the
15 department to provide specified information if another
16 interested party or participant initiates proceedings
17 for the appointment of a guardian advocate, plenary
18 guardian, or limited guardian for the child; requiring
19 that proceedings seeking appointment of a guardian
20 advocate or a determination of incapacity and the
21 appointment of a guardian be conducted in a separate
22 proceeding in guardianship court; amending s. 393.12,
23 F.S.; providing that the guardianship court has
24 jurisdiction over proceedings for appointment of a
25 guardian advocate if petitions are filed for certain
26 minors who are subject to chapter 39, F.S.,

27 | proceedings if such minors have attained a specified
28 | age; providing that such minor has the same due
29 | process rights as certain adults; providing
30 | requirements for when an order appointing a guardian
31 | advocate must be issued; providing that proceedings
32 | seeking appointment of a guardian advocate for certain
33 | minors be conducted separately from any other
34 | proceeding; amending s. 744.301, F.S.; providing that
35 | if a child is subject to proceedings under chapter 39,
36 | F.S., the parents may act as natural guardians unless
37 | the court finds that it is not in the child's best
38 | interests or their parental rights have been
39 | terminated; amending s. 744.3021, F.S.; requiring the
40 | guardianship court to initiate proceedings for
41 | appointment of guardians for certain minors who are
42 | subject to chapter 39, F.S., proceedings if petitions
43 | are filed and if such minors have reached a specified
44 | age; providing that such minor has the same due
45 | process rights as certain adults; providing
46 | requirements for when an order of adjudication and
47 | letters of limited or plenary guardianship must be
48 | issued; providing that proceedings seeking appointment
49 | of a guardian advocate for certain minors be conducted
50 | separately from any other proceeding; providing an
51 | effective date.

52

53 Be It Enacted by the Legislature of the State of Florida:

54

55 Section 1. Subsection (8) of section 39.6251, Florida
56 Statutes, is amended to read:

57 39.6251 Continuing care for young adults.—

58 (8) During the time that a young adult is in care, the
59 court shall maintain jurisdiction to ensure that the department
60 and the lead agencies are providing services and coordinate
61 with, and maintain oversight of, other agencies involved in
62 implementing the young adult's case plan, individual education
63 plan, and transition plan. The court shall review the status of
64 the young adult at least every 6 months and hold a permanency
65 review hearing at least annually. If the young adult is
66 appointed a guardian under chapter 744 or a guardian advocate
67 under s. 393.12, at the permanency review hearing the court
68 shall review the necessity of continuing the guardianship and
69 whether restoration of guardianship proceedings are needed when
70 the young adult reaches 22 years of age. The court may appoint a
71 guardian ad litem or continue the appointment of a guardian ad
72 litem with the young adult's consent. The young adult or any
73 other party to the dependency case may request an additional
74 hearing or review.

75 Section 2. Paragraphs (b) and (c) of subsection (3) of
76 section 39.701, Florida Statutes, are amended to read:

77 39.701 Judicial review.—

78 (3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

79 (b) At the first judicial review hearing held subsequent
80 to the child's 17th birthday, the department shall provide the
81 court with an updated case plan that includes specific
82 information related to the independent living skills that the
83 child has acquired since the child's 13th birthday, or since the
84 date the child came into foster care, whichever came later.

85 1. For any child that may meet the requirements for
86 appointment of a guardian pursuant to chapter 744, or a guardian
87 advocate pursuant to s. 393.12, the updated case plan must be
88 developed in a face-to-face conference with the child, if
89 appropriate; the child's attorney; any court-appointed guardian
90 ad litem; the temporary custodian of the child; and the parent,
91 if the parent's rights have not been terminated.

92 2. At the judicial review hearing, if the court determines
93 pursuant to chapter 744 that there is a good faith basis to
94 believe that the child qualifies for appointment of a guardian
95 advocate, limited guardian, or plenary guardian for the child
96 and that no less restrictive decisionmaking assistance will meet
97 the child's needs:

98 a. The department shall complete a multidisciplinary
99 report which must include, but is not limited to, a psychosocial
100 evaluation and educational report if such a report has not been
101 completed within the previous 2 years.

102 b. The department shall identify one or more individuals
103 who are willing to serve as the guardian advocate pursuant to s.
104 393.12 or as the plenary or limited guardian pursuant to chapter

105 744. Any other interested parties or participants may make
106 efforts to identify such a guardian advocate, limited guardian,
107 or plenary guardian. The child's biological or adoptive family
108 members, including the child's parents if the parents' rights
109 have not been terminated, may not be considered for service as
110 the plenary or limited guardian unless the court enters a
111 written order finding that such an appointment is in the child's
112 best interests.

113 c. Proceedings may be initiated within 180 days after the
114 child's 17th birthday for the appointment of a guardian
115 advocate, plenary guardian, or limited guardian for the child in
116 a separate proceeding in the court division with jurisdiction
117 over guardianship matters and pursuant to chapter 744. The
118 Legislature encourages the use of pro bono representation to
119 initiate proceedings under this section.

120 3. In the event another interested party or participant
121 initiates proceedings for the appointment of a guardian
122 advocate, plenary guardian, or limited guardian for the child,
123 the department shall provide all necessary documentation and
124 information to the petitioner to complete a petition under s.
125 393.12 or chapter 744 within 45 days after the first judicial
126 review hearing after the child's 17th birthday.

127 4. Any proceedings seeking appointment of a guardian
128 advocate or a determination of incapacity and the appointment of
129 a guardian must be conducted in a separate proceeding in the
130 court division with jurisdiction over guardianship matters and

131 pursuant to chapter 744.

132 (c) If the court finds at the judicial review hearing that
133 the department has not met its obligations to the child as
134 stated in this part, in the written case plan, or in the
135 provision of independent living services, the court may issue an
136 order directing the department to show cause as to why it has
137 not done so. If the department cannot justify its noncompliance,
138 the court may give the department 30 days within which to
139 comply. If the department fails to comply within 30 days, the
140 court may hold the department in contempt.

141 Section 3. Paragraph (c) is added to subsection (2) of
142 section 393.12, Florida Statutes, to read:

143 393.12 Capacity; appointment of guardian advocate.—

144 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

145 (c) If a petition is filed pursuant to this section
146 requesting appointment of a guardian advocate for a minor who is
147 the subject of any proceeding under chapter 39, the court
148 division with jurisdiction over guardianship matters has
149 jurisdiction over the proceedings pursuant to this section when
150 the minor reaches the age of 17 years and 6 months or anytime
151 thereafter. The minor shall be provided all the due process
152 rights conferred upon an alleged developmentally disabled adult
153 pursuant to this chapter. The order of appointment of a guardian
154 advocate under this section shall issue upon the minor's 18th
155 birthday or as soon thereafter as possible. Any proceeding
156 pursuant to this paragraph shall be conducted separately from

157 | any other proceeding.

158 | Section 4. Subsection (1) of section 744.301, Florida
159 | Statutes, is amended to read:

160 | 744.301 Natural guardians.—

161 | (1) The parents jointly are the natural guardians of their
162 | own children and of their adopted children, during minority,
163 | unless the parents' parental rights have been terminated
164 | pursuant to chapter 39. If a child is the subject of any
165 | proceeding under chapter 39, the parents may act as natural
166 | guardians under this section unless the court division with
167 | jurisdiction over guardianship matters finds that it is not in
168 | the child's best interests. If one parent dies, the surviving
169 | parent remains the sole natural guardian even if he or she
170 | remarries. If the marriage between the parents is dissolved, the
171 | natural guardianship belongs to the parent to whom sole parental
172 | responsibility has been granted, or if the parents have been
173 | granted shared parental responsibility, both continue as natural
174 | guardians. If the marriage is dissolved and neither parent is
175 | given parental responsibility for the child, neither may act as
176 | natural guardian of the child. The mother of a child born out of
177 | wedlock is the natural guardian of the child and is entitled to
178 | primary residential care and custody of the child unless the
179 | court enters an order stating otherwise.

180 | Section 5. Subsection (1) of section 744.3021, Florida
181 | Statutes, is amended, and subsection (4) is added to that
182 | section, to read:

183 744.3021 Guardians of minors.—

184 (1) Except as provided in subsection (4), upon petition of
185 a parent, brother, sister, next of kin, or other person
186 interested in the welfare of a minor, a guardian for a minor may
187 be appointed by the court without the necessity of adjudication
188 pursuant to s. 744.331. A guardian appointed for a minor,
189 whether of the person or property, has the authority of a
190 plenary guardian.

191 (4) If a petition is filed pursuant to this section
192 requesting appointment of a guardian for a minor who is the
193 subject of any proceeding under chapter 39 and who is aged 17
194 years and 6 months or older, the court division with
195 jurisdiction over guardianship matters has jurisdiction over the
196 proceedings under s. 744.331. The alleged incapacitated minor
197 under this subsection shall be provided all the due process
198 rights conferred upon an alleged incapacitated adult pursuant to
199 this chapter and applicable court rules. The order of
200 adjudication under s. 744.331 and the letters of limited or
201 plenary guardianship may issue upon the minor's 18th birthday or
202 as soon thereafter as possible. Any proceeding pursuant to this
203 subsection shall be conducted separately from any other
204 proceeding.

205 Section 6. This act shall take effect July 1, 2015.