

**By** the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senator Detert

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1                                   A bill to be entitled  
2       An act relating to guardians; amending s. 39.6251,  
3       F.S.; requiring the court at the permanency review  
4       hearing to review the necessity of the guardianship  
5       and whether restoration of guardianship proceedings  
6       are needed when the young adult reaches a certain age  
7       under certain circumstances; amending s. 39.701, F.S.;  
8       requiring that, for a child meeting certain  
9       requirements, the updated case plan be developed in a  
10      face-to-face conference with specified persons  
11      present; requiring the Department of Children and  
12      Families to take specified actions at the judicial  
13      review hearing if the court makes certain  
14      determinations; requiring the department to provide  
15      documentation and information to a petitioner under  
16      certain circumstances; requiring certain proceedings  
17      to be conducted separately; expanding the  
18      circumstances under which a court, after making  
19      certain findings, may issue an order directing the  
20      department to show cause; amending s. 393.12, F.S.;  
21      providing that the guardianship court has jurisdiction  
22      over proceedings for appointment of a guardian  
23      advocate if petitions are filed for certain minors who  
24      are subject to ch. 39, F.S., proceedings if such  
25      minors have attained a specified age; providing that  
26      such minor has the same due process rights as certain  
27      adults; providing requirements for when an order  
28      appointing a guardian advocate must be issued;  
29      providing that proceedings seeking appointment of a

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

49  
50 Be It Enacted by the Legislature of the State of Florida:

51  
52 Section 1. Subsection (8) of section 39.6251, Florida  
53 Statutes, is amended to read:

54 39.6251 Continuing care for young adults.—

55 (8) During the time that a young adult is in care, the  
56 court shall maintain jurisdiction to ensure that the department  
57 and the lead agencies are providing services and coordinate  
58 with, and maintain oversight of, other agencies involved in

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59 implementing the young adult's case plan, individual education  
60 plan, and transition plan. The court shall review the status of  
61 the young adult at least every 6 months and hold a permanency  
62 review hearing at least annually. If the young adult has been  
63 appointed a guardian under chapter 744 or a guardian advocate  
64 under s. 393.12, the court shall review at the permanency review  
65 hearing the necessity of continuing the guardianship and whether  
66 restoration of guardianship proceedings are needed when the  
67 young adult reaches 22 years of age. The court may appoint a  
68 guardian ad litem or continue the appointment of a guardian ad  
69 litem with the young adult's consent. The young adult or any  
70 other party to the dependency case may request an additional  
71 hearing or review.

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

74 39.701 Judicial review.—

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

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

82 1. For any child that may meet the requirements for  
83 appointment of a guardian pursuant to chapter 744 or a guardian  
84 advocate pursuant to s. 393.12, the updated case plan must be  
85 developed in a face-to-face conference with the child, if  
86 appropriate; the child's attorney; any court-appointed guardian  
87 ad litem; the temporary custodian of the child; and the parent,

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88 if the parent's rights have not been terminated.

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

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

99 b. The department shall identify one or more individuals  
100 who are willing to serve as the guardian advocate pursuant to s.  
101 393.12 or as the plenary or limited guardian pursuant to chapter  
102 744. Any other interested parties or participants may make  
103 efforts to identify such a guardian advocate, limited guardian,  
104 or plenary guardian. A child's biological or adoptive family  
105 member, including the child's parent if the parent's rights have  
106 not been terminated, may not be considered for service as the  
107 plenary or limited guardian unless the court enters a written  
108 order finding that such an appointment is in the child's best  
109 interests.

110 c. Proceedings may be initiated within 6 months after the  
111 child's 17th birthday for the appointment of a guardian  
112 advocate, plenary guardian, or limited guardian for the child in  
113 a separate proceeding in the division of the court with proper  
114 jurisdiction over guardianship matters and pursuant to chapter  
115 744. The Legislature encourages the use of pro bono  
116 representation to initiate proceedings under this section.

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117 3. In the event another interested party or participant  
118 initiates proceedings for the appointment of a guardian  
119 advocate, plenary guardian, or limited guardian for the child,  
120 the department shall provide all necessary documentation and  
121 information to the petitioner to complete a petition under  
122 chapter 393 or chapter 744 within 45 days after the first  
123 judicial review hearing after the child's 17th birthday.

124 4. Any proceedings seeking appointment of a guardian  
125 advocate or a determination of incapacity and the appointment of  
126 a guardian must be conducted in a separate proceeding in the  
127 division of the court with jurisdiction over guardianship  
128 matters and pursuant to chapter 744.

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

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

140 393.12 Capacity; appointment of guardian advocate.—

141 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

142 (c) If a petition is filed pursuant to this section  
143 requesting appointment of a guardian advocate for a minor who is  
144 the subject of any proceeding under chapter 39, the division of  
145 the court with jurisdiction over guardianship matters has

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146 jurisdiction over the proceedings pursuant to this section when  
147 the minor reaches the age of 17 years and 6 months or anytime  
148 thereafter. The minor shall be provided all the due process  
149 rights conferred upon an alleged developmentally disabled adult  
150 pursuant to this chapter. The order of appointment of a guardian  
151 advocate under this section shall issue upon the minor's 18th  
152 birthday or as soon thereafter as possible. Any proceeding  
153 pursuant to this paragraph shall be conducted separately from  
154 any other proceeding.

155 Section 4. Subsection (1) of section 744.301, Florida  
156 Statutes, is amended to read:

157 744.301 Natural guardians.—

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

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175 residential care and custody of the child unless the court  
176 enters an order stating otherwise.

177 Section 5. Subsection (1) of section 744.3021, Florida  
178 Statutes, is amended, and subsection (4) is added to that  
179 section, to read:

180 744.3021 Guardians of minors.—

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

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

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