

(Corrected Copy)

By the Committees on Fiscal Policy; Judiciary; Health, Aging
and Long-Term Care; and Senators Forman and Brown-Waite

309-2067-00

1 A bill to be entitled
2 An act relating to guardianship; amending s.
3 744.3145, F.S.; transferring responsibility for
4 the education and training curriculum of
5 guardians from the court to the Statewide
6 Public Guardian; amending s. 744.3215, F.S.;
7 limiting specific authority for a guardian to
8 consent to the withdrawal or withholding of
9 life-prolonging procedures; amending s.
10 744.702, F.S.; providing legislative findings
11 and intent; amending s. 744.7021, F.S.;
12 providing that the head of the Statewide Public
13 Guardianship Office is the Statewide Public
14 Guardian; providing for compensation; deleting
15 an interim report requirement; revising the
16 date for the report on a proposed statewide
17 public guardianship plan to be submitted to the
18 Governor and Legislature; prescribing the
19 location of the Statewide Public Guardianship
20 Office; authorizing the Statewide Public
21 Guardian to convene a workgroup for the
22 development and recommendation of a plan for
23 professional guardian regulation; providing for
24 the appointment by the Statewide Public
25 Guardian of an advisory council for development
26 of curriculum and training programs for public
27 guardians; authorizing a court to appoint the
28 Statewide Public Guardian to investigate the
29 conduct of any guardian appointed by the court;
30 providing for the award of fees; requiring the
31 Statewide Public Guardianship Office to monitor

1 guardianship law and process for indigent and
2 nonindigent residents; requiring periodic
3 reports and recommendations; amending s.
4 744.703, F.S.; allowing a public guardian to
5 serve more than one judicial circuit; requiring
6 a public guardianship office in each circuit;
7 prohibiting more than one public guardian from
8 serving one judicial circuit simultaneously;
9 requiring a nonattorney public guardian to be
10 represented by counsel; amending s. 744.704,
11 F.S.; authorizing a public guardian to serve as
12 a guardian advocate for a person adjudicated
13 under ch. 393 or ch. 394, F.S., under certain
14 circumstances; amending s. 744.705, F.S.;
15 authorizing public guardians to recover from
16 the ward's assets the guardian and attorney's
17 fees in accordance with s. 744.108, F.S.;
18 amending s. 744.708, F.S.; conforming
19 provisions; amending s. 744.709, F.S.;
20 providing for a waiver of the bond requirement
21 of a public guardian; clarifying that the act
22 is implemented to the extent funds are
23 appropriated in the General Appropriations Act
24 or that funds are available from federal or
25 local sources for a specific provision;
26 providing an effective date.

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

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29 Section 1. Subsection (3) of section 744.3145, Florida
30 Statutes, is amended to read:
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744.3145 Guardian education requirements.--

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2 (3) Each person appointed by the court to be a
3 guardian must complete the 8 hours of instruction and
4 education within 1 year after his or her appointment as
5 guardian. The instruction and education must be completed
6 through a course approved by the Statewide Public Guardian
7 ~~chief judge of the circuit court~~ and taught by an a
8 ~~court-approved~~ organization approved by the Statewide Public
9 Guardian. Court-approved organizations may include, but are
10 not limited to, community or junior colleges, guardianship
11 organizations, and the local bar association or The Florida
12 Bar.

13 Section 2. Subsection (4) of section 744.3215, Florida
14 Statutes, is amended to read:

744.3215 Rights of persons determined incapacitated.--

15 (4) Without first obtaining specific authority from
16 the court, as described in s. 744.3725, a guardian may not:

17 (a) Commit the ward to a facility, institution, or
18 licensed service provider without formal placement proceeding,
19 pursuant to chapter 393, chapter 394, or chapter 397.

20 (b) Consent on behalf of the ward to the performance
21 on the ward of any experimental biomedical or behavioral
22 procedure or to the participation by the ward in any
23 biomedical or behavioral experiment. The court may permit
24 such performance or participation only if:

25 1. It is of direct benefit to, and is intended to
26 preserve the life of or prevent serious impairment to the
27 mental or physical health of the ward; or

28 2. It is intended to assist the ward to develop or
29 regain his or her abilities.
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1 (c) Initiate a petition for dissolution of marriage
2 for the ward.

3 (d) Consent on behalf of the ward to termination of
4 the ward's parental rights.

5 (e) Consent on behalf of the ward to the performance
6 of a sterilization or abortion procedure on the ward.

7 (f) Consent to or otherwise direct on behalf of the
8 ward to withdraw or withhold life-prolonging procedures. Any
9 authority exercised under this paragraph must comply with
10 chapter 765.

11 Section 3. Section 744.702, Florida Statutes, is
12 amended to read:

13 744.702 Legislative findings and intent.--

14 (1) The Legislature finds that private guardianship is
15 inadequate where there is no willing and responsible family
16 member or friend, other person, bank, or corporation available
17 to serve as guardian for an incapacitated person, and such
18 person does not have adequate income or wealth for the
19 compensation of a private guardian. The Legislature finds that
20 it is against state policy to allow a person to be adjudicated
21 incapacitated and fail to provide that person with a guardian
22 to exercise those rights that the court finds should be
23 delegated to a guardian. The Legislature finds that it is
24 against state policy to allow a person who is functionally
25 incapable of exercising the rights enumerated in s.
26 744.3215(1)(a)-(o) and s. 744.3215(3)(a)-(g) to be without the
27 protection of guardianship regardless of the origin of the
28 person's incapacity or the incapacitated person's economic
29 circumstances.The Legislature intends through this act to
30 establish the Statewide Public Guardianship Office, and
31 require ~~permit~~ the establishment of offices of public guardian

1 for the purpose of providing guardianship services for
2 incapacitated persons when no private guardian is available.

3 (2) The Legislature finds that the number of persons
4 in the state in need of guardianship and financially unable to
5 afford the cost of a private guardian constitutes a crisis
6 that must be addressed by the Executive and Legislative
7 branches at the earliest possible date. It is, therefore, the
8 intent of the Legislature that by October 1, 2001, there be an
9 office of public guardian established in each judicial
10 circuit, staffed to appropriately manage the demand for public
11 guardianship services in each judicial circuit.The
12 Legislature ~~further~~ finds that alternatives to guardianship
13 and less intrusive means of assistance should always be
14 explored, including, but not limited to, guardian advocates,
15 before an individual's rights are removed through an
16 adjudication of incapacity. The purpose of this legislation is
17 to provide a public guardian only to those persons whose needs
18 cannot be met through less drastic means of intervention and
19 to ensure that each person who needs a guardian and who meets
20 the income and asset limitation, as set forth in s. 744.704,
21 will have access to the court to have his or her need for a
22 guardian addressed. The Legislature finds that those persons
23 requiring public guardianship are the responsibility of the
24 state and that the state should properly fund public
25 guardianship services.

26 (3) The Legislature finds that in many instances the
27 appointment of professional guardians to provide pro-bono
28 public guardianship services is the only access indigent
29 incapacitated persons have to guardianship services. While the
30 Legislature does not want to discourage the provision of
31 pro-bono guardianship services to incapacitated indigent

1 persons by professional guardians, in some instances the
2 pro-bono case load of professional guardians is as much as 50
3 percent, overburdening such professional guardians to the
4 extent that their economic competitiveness is degraded,
5 resulting in the undersupply of guardianship services.

6 (4) The Legislature finds guardianship regulation is
7 currently the responsibility of the courts and that there has
8 been such rapid growth in the need for guardianship services
9 that the court ought to have the administrative burden of
10 guardianship regulation relieved. Accordingly, the Statewide
11 Public Guardian is authorized to convene a workgroup
12 consisting of representatives of the court system, attorneys,
13 guardians, and other interested persons for the purpose of
14 developing and recommending a plan for professional
15 guardianship regulation to the Legislature.

16 Section 4. Section 744.7021, Florida Statutes, is
17 amended to read:

18 744.7021 Statewide Public Guardianship Office.--There
19 is ~~hereby~~ created the Statewide Public Guardianship Office
20 within the Department of Elderly Affairs. The Department of
21 Elderly Affairs shall provide administrative support and
22 service to the office to the extent requested by the Statewide
23 Public Guardian ~~executive director~~ within the available
24 resources of the department. The Statewide Public Guardianship
25 Office may request the assistance of the Inspector General of
26 the Department of Elderly Affairs in providing auditing
27 services, and the Office of General Counsel of the department
28 may provide assistance in rulemaking and other matters as
29 needed to assist the Statewide Public Guardianship Office. The
30 Statewide Public Guardianship Office shall not be subject to
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1 control, supervision, or direction by the Department of
2 Elderly Affairs in the performance of its duties.

3 (1) The head of the Statewide Public Guardianship
4 Office is the Statewide Public Guardian ~~executive director~~,
5 who shall be appointed by the Governor. The Statewide Public
6 Guardian ~~executive director~~ must be a licensed attorney who
7 has with a background in guardianship law and knowledge of
8 social services available to meet the needs of incapacitated
9 persons, shall serve on a full-time basis, and shall
10 personally, or through representatives of the office, carry
11 out the purposes and functions of the Statewide Public
12 Guardianship Office in accordance with state and federal law.
13 The Statewide Public Guardian ~~executive director~~ shall serve
14 at the pleasure of and report to the Governor.

15 (2) The Statewide Public Guardianship Office shall
16 ~~within available resources,~~ have oversight responsibilities
17 for all public guardians.

18 (a) The office shall review the current public
19 guardian programs in Florida and other states.

20 (b) The office, in consultation with local
21 guardianship offices, shall develop statewide performance
22 measures and standards.

23 (c) The office shall review the various methods of
24 funding guardianship programs, the kinds of services being
25 provided by such programs, and the demographics of the wards.
26 In addition, the office shall review and make recommendations
27 regarding the feasibility of recovering a portion or all of
28 the costs of providing public guardianship services from the
29 assets or income of the wards.

30 (d) ~~No later than October 1, 2000, the office shall~~
31 ~~submit to the Governor, the President of the Senate, the~~

1 ~~Speaker of the House of Representatives, and the Chief Justice~~
2 ~~of the Supreme Court an interim report describing the progress~~
3 ~~of the office in meeting the goals as described in this~~
4 ~~section.~~ No later than January 1, 2001 ~~October 1, 2001~~, the
5 office shall submit to the Governor, the President of the
6 Senate, the Speaker of the House of Representatives, and the
7 Chief Justice of the Supreme Court a proposed public
8 guardianship plan including alternatives for meeting the
9 state's guardianship needs. This plan shall ~~may~~ include
10 recommendations for ~~less than~~ the entire state, ~~may include a~~
11 ~~phase-in system~~, and shall include estimates of the cost of
12 each of the alternatives. Each year thereafter, or as the need
13 exists, the office shall provide a status report and provide
14 further recommendations related to ~~address the need for~~ public
15 guardianship services, guardianship law, guardianship
16 procedure, and related issues.

17 (e) The office may provide assistance to local
18 governments or entities in pursuing grant opportunities. The
19 office shall review and make recommendations in the annual
20 report on the availability and efficacy of seeking Medicaid
21 matching funds. The office shall diligently seek ways to use
22 existing programs and services to meet the needs of public
23 wards.

24 (f) The office shall develop a guardianship training
25 program. The training program may be offered to all guardians
26 whether public or private. The office shall establish a
27 curriculum committee that shall use the recommended minimum
28 content for the professional guardianship course developed by
29 the Florida Guardianship Education Coalition to develop the
30 training program specified in this part. The curriculum
31 committee shall include, but not be limited to, probate

1 judges. A fee may be charged to private guardians in order to
2 defray the cost of providing the training. In addition, a fee
3 may be charged to any training provider for up to the actual
4 cost of the review and approval of their curriculum. Any fees
5 collected pursuant to this paragraph shall be deposited in the
6 Department of Elderly Affairs Administrative Trust Fund to be
7 used for the guardianship training program. In order to
8 facilitate development of guardianship training programs and
9 the establishment of curriculum and in order to have the
10 assistance of academicians in the area of mental health, the
11 office shall be housed at the Louis de la Parte Florida Mental
12 Health Institute on the campus of the University of South
13 Florida. The institute shall provide adequate office space and
14 support services as necessary for the office. The Statewide
15 Public Guardian may establish satellite offices in other areas
16 of the state as necessary.

17 (3) The office may conduct or contract for
18 demonstration projects, within funds appropriated or through
19 gifts, grants, or contributions for such purposes, to
20 determine the feasibility or desirability of new concepts of
21 organization, administration, financing, or service delivery
22 designed to preserve the civil and constitutional rights of
23 persons of marginal or diminished capacity. Any gifts, grants,
24 or contributions for such purposes shall be deposited in the
25 Department of Elderly Affairs Administrative Trust Fund.

26 (4) The Statewide Public Guardian may establish an
27 advisory council for the purpose of facilitating the
28 collection of expertise and assisting in the development of
29 curriculum and training programs for guardians and the
30 proposed public guardianship plan. If an advisory council is

1 created, the advisory council may not consist of more than 12
2 members and shall be established as follows:

3 (a) The council shall include at least one member each
4 representing circuit court judges in probate and guardianship
5 law, the Real Property, Probate and Trust Law Section of The
6 Florida Bar, the Elder Law Section of The Florida Bar, the
7 Florida Association of Public Guardians, licensed physicians
8 specializing in geriatric medicine, the office of the Attorney
9 General as liaison on elder affairs or elder law, the State
10 Office of Long-Term Care Ombudsman, academicians or
11 researchers in the field of geriatrics who are on the faculty
12 of a university, and elder or senior citizens or consumers
13 from the elder or senior citizen community.

14 (b) Council members shall be appointed by the
15 Statewide Public Guardian, except that the elder or senior
16 citizen or consumer from the elder or senior citizen community
17 shall be appointed by the Governor.

18 (c) Council members shall be appointed for 4-year
19 staggered terms, except for any initial lesser term required
20 to achieve staggering. Members may be reappointed for an
21 additional 4-year term.

22 (d) Council members shall serve without remuneration
23 but may be reimbursed for per diem and travel expenses as
24 provided in s. 112.061 to the extent that resources are
25 available.

26 (5) In instances in which the court determines that a
27 court monitor, as provided for in s. 744.107, needs to be a
28 disinterested agency from outside the circuit, the court may
29 appoint the Statewide Public Guardian or the designee of the
30 Statewide Public Guardian, except that in no instance may the
31 Statewide Public Guardian designate the local public guardian

1 within the circuit. The Statewide Public Guardian may be
 2 awarded a reasonable fee as determined by the court to be paid
 3 from the property of the ward.

4 (6)(4) The office has authority to adopt rules
 5 pursuant to ss. 120.536(1) and 120.54 to carry out the
 6 provisions of this section.

7 Section 5. Section 744.703, Florida Statutes, is
 8 amended to read:

9 744.703 Office of public guardian; appointment,
 10 notification.--

11 (1) The Statewide Public Guardian ~~executive director~~
 12 ~~of the Statewide Public Guardianship Office~~, after
 13 consultation with the chief judge and other circuit judges
 14 within a ~~the~~ judicial circuit and with appropriate advocacy
 15 groups and individuals and organizations who are knowledgeable
 16 about the needs of incapacitated persons, shall ~~may~~ establish,
 17 ~~within a county in the judicial circuit or within the judicial~~
 18 ~~circuit,~~an office of public guardian and ~~if so established,~~
 19 shall create a list of persons best qualified to serve as the
 20 public guardian, and such qualifications shall include review
 21 pursuant to s. 744.3135. The public guardian must have
 22 knowledge of the legal process and knowledge of social
 23 services available to meet the needs of incapacitated persons.
 24 A nonprofit corporation under s. 744.309(5) may be appointed
 25 public guardian only if:

26 (a) It has been granted tax-exempt status from the
 27 United States Internal Revenue Service; and

28 (b) It maintains a staff of professionally qualified
 29 individuals to carry out the guardianship functions, including
 30 a staff attorney who has experience in probate areas and
 31 another person who has a master's degree in social work, or a

1 gerontologist, psychologist, registered nurse, or nurse
2 practitioner.

3 (2) A public guardian appointed under this section may
4 serve more than one circuit; however, there must be an open
5 and adequately staffed office providing public guardianship
6 services within each judicial circuit served. A judicial
7 circuit may not be simultaneously served by more than one
8 public guardian. A public guardian who is not an attorney must
9 be represented by council in all guardianship proceedings.

10 (3)~~(2)~~ The Statewide Public Guardian ~~executive~~
11 ~~director~~ shall appoint or contract with a public guardian from
12 the list of candidates described in subsection (1). A public
13 guardian must meet the qualifications for a guardian as
14 prescribed in s. 744.309(1)(a). Upon appointment of a the
15 public guardian, the Statewide Public Guardian ~~executive~~
16 ~~director~~ shall notify the chief judge of the judicial circuit
17 and the Chief Justice of the Supreme Court of Florida, in
18 writing, of the appointment.

19 (4)~~(3)~~ If the needs of the county or circuit do not
20 require a full-time public guardian, a part-time public
21 guardian may be appointed at reduced compensation.

22 (5)~~(4)~~ A public guardian, whether full-time or
23 part-time, may not hold any position that would create a
24 conflict of interest.

25 (6)~~(5)~~ The public guardian is to be appointed for a
26 term of 4 years, after which her or his appointment must be
27 reviewed by the Statewide Public Guardian ~~executive director~~,
28 and may be reappointed for a term of up to 4 years. The
29 Statewide Public Guardian ~~executive director~~ may suspend a
30 public guardian with or without the request of the chief
31 judge. If a public guardian is suspended, the Statewide Public

1 Guardian ~~executive director~~ shall appoint an acting public
2 guardian as soon as possible to serve until such time as a
3 permanent replacement is selected. A public guardian may be
4 removed from office during the term of office ~~only~~ by the
5 Statewide Public Guardian, ~~executive director~~ who must consult
6 with the chief judge prior to said removal in accordance with
7 ss. 744.474 and 744.477. A recommendation of removal made by
8 the chief judge must be considered by the Statewide Public
9 Guardian ~~executive director~~.

10 ~~(7)(6)~~ Public guardians who have been previously
11 appointed by a chief judge prior to the effective date of this
12 act pursuant to this section may continue in their positions
13 until the expiration of their term pursuant to their
14 agreement. However, oversight of all public guardians shall
15 transfer to the Statewide Public Guardianship Office upon the
16 effective date of this act. The ~~executive director of the~~
17 Statewide Public Guardian Guardianship Office shall be
18 responsible for all future appointments of public guardians
19 pursuant to this act.

20 Section 6. Subsection (1) of section 744.704, Florida
21 Statutes, is amended and subsection (10) is added to that
22 section to read:

23 744.704 Powers and duties.--

24 (1) A public guardian may serve as a guardian of a
25 person adjudicated incapacitated under this chapter, as a
26 guardian advocate for a person adjudicated under chapter 393,
27 or as a guardian advocate for a person adjudicated under
28 chapter 394:

29 (a) If there is no family member or friend, other
30 person, bank, or corporation willing and qualified to serve as
31 guardian; and

1 (b) If the assets of the ward do not exceed the asset
2 level for Medicaid eligibility, plus \$2,000, exclusive of
3 homestead and exempt property as defined in s. 4, Art. X of
4 the State Constitution, and the ward's income, from all
5 sources, is less than ~~\$6,000~~~~\$4,000~~ per year. Income from
6 public welfare programs, supplemental security income,
7 optional state supplement, a disability pension, or a social
8 security pension shall be excluded in such computation.
9 However, a ward whose total income, counting excludable
10 income, exceeds \$30,000 a year may not be served.

11 (10) A public guardian may not be compelled to serve
12 as a guardian advocate for a person receiving services under
13 chapter 393 or under chapter 394 if the public guardian finds
14 that he or she does not have sufficient staff to do so.

15 Section 7. Subsection (1) of section 744.705, Florida
16 Statutes, is amended to read:

17 744.705 Costs of public guardian.--

18 (1) ~~All~~ Costs of administration, including filing
19 fees, shall be paid from the budget of the office of public
20 guardian. No costs of administration, including filing fees,
21 shall be recovered from the assets or the income of the ward,
22 except that the court may award fees in accordance with s.
23 744.108.

24 Section 8. Subsections (4) and (8) of section 744.708,
25 Florida Statutes, are amended to read:

26 744.708 Reports and standards.--

27 (4) Within 6 months of his or her appointment as
28 guardian of a ward, the public guardian shall submit to the
29 clerk of the court for placement in the ward's guardianship
30 file and to the ~~executive director of the~~ Statewide Public
31 Guardian Guardianship Office a report on his or her efforts to

1 locate a family member or friend, other person, bank, or
2 corporation to act as guardian of the ward and a report on the
3 ward's potential to be restored to capacity.

4 (8) The term "professional," for purposes of this
5 part, does ~~shall~~ not include the public guardian nor the
6 ~~executive director of the~~ Statewide Public Guardian
7 ~~Guardianship Office~~. The term "professional" is ~~shall be~~
8 limited to those persons who exercise direct supervision of
9 individual wards under the direction of the public guardian.

10 Section 9. Section 744.709, Florida Statutes, is
11 amended to read:

12 744.709 Surety bond.--Upon taking office, a public
13 guardian shall file a bond with surety as prescribed in s.
14 45.011 to be approved by the clerk, unless bond is waived by
15 the chief judge of the judicial circuit. The bond shall be
16 payable to the Governor and the Governor's successors in
17 office, in the penal sum of not less than \$5,000 nor more than
18 \$25,000, conditioned on the faithful performance of all duties
19 by the guardian. The amount of the bond shall be fixed by the
20 majority of the judges within the judicial circuit. In form
21 the bond shall be joint and several. The bond shall be
22 purchased from the funds of the local office of public
23 guardian.

24 Section 10. Each provision of this act will be
25 implemented to the extent that funds are specifically
26 appropriated in the General Appropriations Act for Fiscal Year
27 2000-2001 or that funds are available from federal or local
28 sources for a specific provision.

29 Section 11. This act shall take effect July 1, 2000.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/CS/SB 1048

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Changes the date by which the circuit guardianship offices must be operational from July 1, 2001 to October 1, 2001.

Removes requirement that the Statewide Public Guardian be paid the same annual salary as public defenders.

Adds a requirement that one of the members of an advisory council must represent the Real Property, Probate and Trust Law Section of the Florida Bar.

States that the provisions of the bill will be implemented to the extent funds are specifically appropriated for FY 2000-2001 or to the extent that grants funds are obtained.