

By Representative Crow

1 A bill to be entitled
2 An act relating to guardianship; amending s.
3 744.702, F.S.; providing legislative intent;
4 amending s. 744.7021, F.S.; providing that the
5 head of the Statewide Public Guardianship
6 Office is the Statewide Public Guardian;
7 providing for compensation; requiring a
8 proposed statewide public guardianship plan to
9 be submitted to the Governor and Legislature;
10 prescribing the location of the Statewide
11 Public Guardianship Office; providing for the
12 appointment by the Statewide Public Guardian of
13 advisory councils for development of curriculum
14 and training programs for public guardians;
15 authorizing a court to appoint the Statewide
16 Public Guardian to investigate the conduct of
17 any guardian appointed by the court; providing
18 for fees to be paid by the guardianship for
19 such services when ordered by the court;
20 amending s. 744.703, F.S.; allowing a public
21 guardian to serve more than one judicial
22 circuit; requiring a public guardianship office
23 in each circuit; requiring a nonattorney public
24 guardian to employ an attorney; amending s.
25 744.704, F.S.; authorizing a public guardian to
26 serve as a guardian advocate for a person under
27 ch. 393 or ch. 394, F.S., under certain
28 circumstances; amending s. 744.705, F.S.;
29 authorizing public guardians to recover from
30 the ward's assets the costs of administering
31 the guardianship; providing a limitation;

1 providing for deposit of such funds in the
2 Department of Elderly Affairs Administrative
3 Trust Fund to the account of the Public
4 Guardian; amending s. 744.708, F.S.; conforming
5 provisions; amending s. 744.709, F.S.;
6 providing for a waiver of the oath requirement
7 of a public guardian; providing that certain
8 information held by privately owned nursing
9 homes, group homes, adult living facilities, or
10 hospitals relating to their patients or
11 residents is not subject to force discovery in
12 an action brought to admit their answers as an
13 admission against interest; providing an
14 effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Section 744.702, Florida Statutes, is
19 amended to read:

20 744.702 Legislative intent.--The Legislature finds
21 that private guardianship is inadequate where there is no
22 willing and responsible family member or friend, other person,
23 bank, or corporation available to serve as guardian for an
24 incapacitated person, and such person does not have adequate
25 income or wealth for the compensation of a private guardian.
26 The Legislature further finds that it is against state policy
27 to allow a person to be adjudicated incapacitated and fail to
28 provide that person with a guardian to exercise those rights
29 that the court finds should be delegated to a guardian. The
30 Legislature further finds that it is against state policy to
31 allow a person who is functionally incapable of exercising the

1 rights enumerated in s. 744.3215(1)(a)-(o) and s.
2 744.3215(3)(a)-(g) to be without the protection of
3 guardianship because such person does not have adequate income
4 or wealth for the compensation of a private guardian.The
5 Legislature intends through this act to establish the
6 Statewide Public Guardianship Office, and require ~~permit~~ the
7 establishment of offices of public guardian for the purpose of
8 providing guardianship services for incapacitated persons when
9 no private guardian is available. The Legislature finds that
10 the number of persons in the state in need of guardianship and
11 financially unable to afford the cost of a private guardian
12 constitutes a crisis that must be addressed by the Executive
13 and Legislative branches at the earliest possible date. It is
14 therefore the intent of the Legislature that by not later than
15 July 1, 2001, there be an office of public guardian
16 established in each judicial circuit, staffed to appropriately
17 manage the demand for public guardianship services in each
18 judicial circuit.The Legislature further finds that
19 alternatives to guardianship and less intrusive means of
20 assistance should always be explored, including, but not
21 limited to, guardian advocates, before an individual's rights
22 are removed through an adjudication of incapacity. The purpose
23 of this legislation is to provide a public guardian only to
24 those persons whose needs cannot be met through less drastic
25 means of intervention and to ensure that each person who needs
26 a guardian and who meets the income and asset limitation as
27 set forth in s. 744.704, will have access to the court to have
28 his or her need for a guardian addressed. The Legislature
29 finds that those persons requiring public guardianship are the
30 responsibility of the state and that the state should properly
31 fund public guardianship services. The Legislature further

1 finds that the practice of courts requiring or appointing
2 professional guardians to provide public guardianship services
3 without remuneration discourages the establishment of private
4 guardian services by those who cannot afford to operate a
5 professional guardianship business that is burdened with
6 non-fee-producing public guardianship services. As such, this
7 practice creates a crisis in the availability of guardianship
8 services for all economic levels of wards in the state. The
9 Legislature finds that there is an increasing need for
10 guardianship services not only among the elderly, but among
11 people of all ages including those who are developmentally
12 disabled. It is the legislative intent that the Statewide
13 Public Guardianship Office be the provider of support for all
14 public guardianship services through whatever agency or under
15 whatever program these services are needed and that the
16 services of the Statewide Public Guardianship Office are not
17 to be construed as limited to providing guardian services to
18 the elderly. The Legislature further finds that the
19 guardianship profession is largely unregulated and that in the
20 interest of protecting the public, and in the interest of
21 raising the standards and accountability of professional
22 guardians, the law should provide for registration, licensure,
23 and educational training requirements for professional
24 guardians. The licensure and regulation of professional
25 guardians should be through and administered by the Statewide
26 Public Guardianship Office. The Legislature further finds that
27 there is no agency available in the state for courts to turn
28 to as a guardianship ombudsman. There are cases in which
29 guardians are appointed, often friends or family members, when
30 the issue is raised either upon suggestion of the court or by
31 petition of a third party as to the adequacy of the services

1 provided by the guardian, and in which there is reason to
2 believe that a disinterested agency should evaluate and report
3 to the court concerning the propriety and appropriateness of
4 the guardian's services. The Legislature finds that it is in
5 the best interest of wards that the Statewide Public
6 Guardianship Office have the authority to investigate and
7 report to courts when requested.

8 Section 2. Section 744.7021, Florida Statutes, is
9 amended to read:

10 744.7021 Statewide Public Guardianship Office.--There
11 is ~~hereby~~ created the Statewide Public Guardianship Office
12 within the Department of Elderly Affairs. The Department of
13 Elderly Affairs shall provide administrative support and
14 service to the office to the extent requested by the Statewide
15 Public Guardian ~~executive director~~ within the available
16 resources of the department. The Statewide Public Guardianship
17 Office may request the assistance of the Inspector General of
18 the Department of Elderly Affairs in providing auditing
19 services, and the Office of General Counsel of the department
20 may provide assistance in rulemaking and other matters as
21 needed to assist the Statewide Public Guardianship Office. The
22 Statewide Public Guardianship Office shall not be subject to
23 control, supervision, or direction by the Department of
24 Elderly Affairs in the performance of its duties.

25 (1) The head of the Statewide Public Guardianship
26 Office is the Statewide Public Guardian ~~executive director~~,
27 who shall be appointed by the Governor. The Statewide Public
28 Guardian ~~executive director~~ must be a licensed attorney who
29 has with a background in guardianship law and knowledge of
30 social services available to meet the needs of incapacitated
31 persons, shall serve on a full-time basis, and shall

1 personally, or through representatives of the office, carry
2 out the purposes and functions of the Statewide Public
3 Guardianship Office in accordance with state and federal law.
4 The Statewide Public Guardian ~~executive director~~ shall serve
5 at the pleasure of and report to the Governor and shall be
6 compensated at the same annual salary set by law for the
7 public defender in each judicial circuit.

8 (2) The Statewide Public Guardianship Office shall,
9 ~~within available resources,~~ have oversight responsibilities
10 for all public guardians.

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

13 (b) The office, in consultation with local
14 guardianship offices, shall develop statewide performance
15 measures and standards.

16 (c) The office shall review the various methods of
17 funding guardianship programs, the kinds of services being
18 provided by such programs, and the demographics of the wards.
19 In addition, the office shall review and make recommendations
20 regarding the feasibility of recovering a portion or all of
21 the costs of providing public guardianship services from the
22 assets or income of the wards.

23 ~~(d) No later than October 1, 2000, the office shall~~
24 ~~submit to the Governor, the President of the Senate, the~~
25 ~~Speaker of the House of Representatives, and the Chief Justice~~
26 ~~of the Supreme Court an interim report describing the progress~~
27 ~~of the office in meeting the goals as described in this~~
28 ~~section.~~ No later than January 1, 2001 ~~October 1, 2001,~~ the
29 office shall submit to the Governor, the President of the
30 Senate, the Speaker of the House of Representatives, and the
31 Chief Justice of the Supreme Court a proposed public

1 guardianship plan including alternatives for meeting the
2 state's guardianship needs. This plan shall ~~may~~ include
3 recommendations for ~~less than~~ the entire state, ~~may include a~~
4 ~~phase-in system~~, and shall include estimates of the cost of
5 each of the alternatives. Each year thereafter, the office
6 shall provide a status report and provide further
7 recommendations to address the need for public guardianship
8 services and related issues.

9 (e) The office may provide assistance to local
10 governments or entities in pursuing grant opportunities. The
11 office shall review and make recommendations in the annual
12 report on the availability and efficacy of seeking Medicaid
13 matching funds. The office shall diligently seek ways to use
14 existing programs and services to meet the needs of public
15 wards.

16 (f) The office shall develop a guardianship training
17 program. The training program may be offered to all guardians
18 whether public or private. The office shall establish a
19 curriculum committee to develop the training program specified
20 in this part. The curriculum committee shall include, but not
21 be limited to, probate judges. A fee may be charged to private
22 guardians in order to defray the cost of providing the
23 training. In addition, a fee may be charged to any training
24 provider for up to the actual cost of the review and approval
25 of their curriculum. Any fees collected pursuant to this
26 paragraph shall be deposited in the Department of Elderly
27 Affairs Administrative Trust Fund to be used for the
28 guardianship training program. In order to facilitate
29 development of guardianship training programs and the
30 establishment of curriculum and in order to have the
31 assistance of academicians in the area of mental health, the

1 Statewide Public Guardianship Office shall be housed at the
2 Louis de la Parte Florida Mental Health Institute on the
3 campus of the University of South Florida. The institute shall
4 provide adequate office space and support services as
5 necessary for the Statewide Public Guardianship Office. This
6 does not preclude the establishment of a second office in the
7 Department of Elderly Affairs in Tallahassee.

8 (3) The office may conduct or contract for
9 demonstration projects, within funds appropriated or through
10 gifts, grants, or contributions for such purposes, to
11 determine the feasibility or desirability of new concepts of
12 organization, administration, financing, or service delivery
13 designed to preserve the civil and constitutional rights of
14 persons of marginal or diminished capacity. Any gifts, grants,
15 or contributions for such purposes shall be deposited in the
16 Department of Elderly Affairs Administrative Trust Fund.

17 (4) The Statewide Public Guardian may appoint advisory
18 councils to facilitate the collection of expertise for the
19 development of curriculum and training programs as well as the
20 proposed public guardianship plan. Council members shall serve
21 without compensation other than reimbursement for reasonably
22 incurred expenses.

23 (5) The Statewide Public Guardian may be appointed by
24 any court in the state to investigate and report to the court
25 as to the propriety of the conduct of any guardian appointed
26 by the court. Upon completion of the investigation as ordered
27 by the court, the Statewide Public Guardian may petition the
28 guardianship for fees, and when there are sufficient assets,
29 such fees must be deposited with the Department of Elderly
30 Affairs Administrative Trust Fund to the account of the
31 Statewide Public Guardian and shall be made available to the

1 Statewide Public Guardian to supplement the budgets of the
2 several public guardians and to underwrite the costs of the
3 Statewide Public Guardian in conducting such investigations.

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 3. 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 public guardian appointed under this section may serve more
25 than one circuit; however, there must be an open and
26 adequately staffed office providing public guardianship
27 services within each judicial circuit, notwithstanding the
28 fact that a particular public guardian may serve one or more
29 circuits, and all of the circuits must be served and a circuit
30 may not be divided among several public guardians. A public
31 guardian who is not an attorney must have a staff attorney or

1 contract with an attorney to perform the legal functions of
2 the wards.A nonprofit corporation under s. 744.309(5) may be
3 appointed public guardian only if:
4 (a) It has been granted tax-exempt status from the
5 United States Internal Revenue Service; and
6 (b) It maintains a staff of professionally qualified
7 individuals to carry out the guardianship functions, including
8 a staff attorney who has experience in probate areas and
9 another person who has a master's degree in social work, or a
10 gerontologist, psychologist, registered nurse, or nurse
11 practitioner.
12 (2) The Statewide Public Guardian ~~executive director~~
13 shall appoint or contract with a public guardian from the list
14 of candidates described in subsection (1). A public guardian
15 must meet the qualifications for a guardian as prescribed in
16 s. 744.309(1)(a). Upon appointment of a ~~the~~ public guardian,
17 the Statewide Public Guardian ~~executive director~~ shall notify
18 the chief judge of the judicial circuit and the Chief Justice
19 of the Supreme Court of Florida, in writing, of the
20 appointment.
21 (3) If the needs of the county or circuit do not
22 require a full-time public guardian, a part-time public
23 guardian may be appointed at reduced compensation.
24 (4) A public guardian, whether full-time or part-time,
25 may not hold any position that would create a conflict of
26 interest.
27 (5) The public guardian is to be appointed for a term
28 of 4 years, after which her or his appointment must be
29 reviewed by the Statewide Public Guardian ~~executive director~~,
30 and may be reappointed for a term of up to 4 years. The
31 Statewide Public Guardian ~~executive director~~ may suspend a

1 public guardian with or without the request of the chief
2 judge. If a public guardian is suspended, the Statewide Public
3 Guardian ~~executive director~~ shall appoint an acting public
4 guardian as soon as possible to serve until such time as a
5 permanent replacement is selected. A public guardian may be
6 removed from office during the term of office only by the
7 Statewide Public Guardian, ~~executive director~~ who must consult
8 with the chief judge prior to said removal. A recommendation
9 of removal made by the chief judge must be considered by the
10 Statewide Public Guardian ~~executive director~~.

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

21 Section 4. Subsection (1) of section 744.704, Florida
22 Statutes, is amended and subsection (10) is added to said
23 section to read:

24 744.704 Powers and duties.--

25 (1) A public guardian may serve as a guardian of a
26 person adjudicated incapacitated under this chapter, as a
27 guardian advocate for a person adjudicated under chapter 393,
28 or as a guardian advocate for a person under 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 under chapter 394 if the
13 public guardian finds that he or she does not have sufficient
14 staff to do so.

15 Section 5. Section 744.705, Florida Statutes, is
16 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 as provided in this section.

23 (2) In any proceeding for appointment of a public
24 guardian, or in any proceeding involving the estate of a ward
25 for whom a public guardian has been appointed guardian, the
26 court may waive any court costs or filing fees.

27 (3) At the time of filing and simultaneously with the
28 filing of a ward's annual accounting, report, and plan, or at
29 such time as the ward's assets exceed or can be expected to
30 exceed the Medicaid asset limitation, the public guardian may
31 file a petition to recover all or some of the costs

1 attributable to the administration of the guardianship. The
2 petition must be itemized and show the method of charges for
3 direct case management and charges for purely administrative
4 functions. The petition must be verified and must
5 affirmatively show that all competing needs of the ward have
6 been met and can reasonably be expected to be met in the
7 coming reporting year. At no time may an award of recovery of
8 costs for the year exceed the average annual cost per award of
9 providing guardianship services to all persons served by the
10 public guardian. Any award collected for cost recovery must be
11 deposited in the Department of Elderly Affairs Administrative
12 Trust Fund to the account of Public Guardian and must be made
13 available to the Statewide Public Guardian to supplement the
14 budgets of the several public guardians.

15 Section 6. Subsections (4) and (8) of section 744.708,
16 Florida Statutes, are amended to read:

17 744.708 Reports and standards.--

18 (4) Within 6 months of his or her appointment as
19 guardian of a ward, the public guardian shall submit to the
20 clerk of the court for placement in the ward's guardianship
21 file and to the ~~executive director of the~~ Statewide Public
22 Guardian Guardianship Office a report on his or her efforts to
23 locate a family member or friend, other person, bank, or
24 corporation to act as guardian of the ward and a report on the
25 ward's potential to be restored to capacity.

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

1 Section 7. Section 744.709, Florida Statutes, is
2 amended to read:

3 744.709 Surety bond.--Upon taking office, a public
4 guardian shall file a bond with surety as prescribed in s.
5 45.011 to be approved by the clerk, unless bond is waived by
6 the chief judge of the judicial circuit. The bond shall be
7 payable to the Governor and the Governor's successors in
8 office, in the penal sum of not less than \$5,000 nor more than
9 \$25,000, conditioned on the faithful performance of all duties
10 by the guardian. The amount of the bond shall be fixed by the
11 majority of the judges within the judicial circuit. In form
12 the bond shall be joint and several. The bond shall be
13 purchased from the funds of the local office of public
14 guardian.

15 Section 8. In responses to surveys by the Statewide
16 Public Guardianship Office as to whether patients or residents
17 are unable to give informed consent for medical treatment or
18 are unable to conduct their affairs, the opinions of any
19 privately owned nursing home, group home, adult living
20 facility, or hospital whose patients or residents receive
21 public funds that contribute to the cost of their care are not
22 subject to forced discovery in any action brought against them
23 to admit their answers as an admission against interest.

24 Section 9. This act shall take effect July 1, 2000.
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LEGISLATIVE SUMMARY

Substantially amends ch. 744, F.S., relating to public guardianship. Provides legislative intent. Provides that the head of the Statewide Public Guardianship Office is the Statewide Public Guardian. Provides for compensation of the Statewide Public Guardian. Requires the Statewide Public Guardianship Office to submit a proposed statewide public guardianship plan to the Governor and the Legislature. Prescribes the location of the office of the Statewide Public Guardianship Office. Provides for the appointment by the Statewide Public Guardian of advisory councils for development of curriculum and training programs for public guardians. Authorizes a court to appoint the Statewide Public Guardian to investigate the conduct of any guardian appointed by the court. Provides for the recovery of fees from the guardianship for such services when ordered by the court. Allows a public guardian to serve more than one circuit, but requires that a public guardian office be located in each circuit. Mandates that a nonattorney public guardian hire an attorney. Allows a public guardian to serve as a guardian advocate for a person under ch. 393 or ch. 394, F.S., under certain circumstances. Authorizes a public guardian to recover from the ward's assets the costs of administering the guardianship. Provides a limitation on the amount to be recovered. Provides for deposit of funds recovered into the Department of Elderly Affairs Administrative Trust Fund to the account of Public Guardian. Provides for the waiver of the oath of a public guardian upon court order. Provides that certain information provided by privately owned nursing homes, group homes, adult living facilities, or hospitals relating to their patients or residents is not subject to forced discovery in an action brought to admit their answers as an admission against interest.