

By the Committee on Real Property & Probate and
Representative Crow

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

1 and process for indigent and nonindigent
2 residents; requiring periodic reports and
3 recommendations; amending s. 744.703, F.S.;
4 allowing a public guardian to serve more than
5 one judicial circuit; requiring a public
6 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 the court to award costs of
16 administration from ward's assets in accordance
17 with s. 744.708, F.S.; amending s. 744.708,
18 F.S.; conforming provisions; amending s.
19 744.709, F.S.; providing for a waiver of the
20 bond requirement of a public guardian;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Subsection (3) of section 744.3145, Florida
26 Statutes, is amended to read:

27 744.3145 Guardian education requirements.--

28 (3) Each person appointed by the court to be a
29 guardian must complete the 8 hours of instruction and
30 education within 1 year after his or her appointment as
31 guardian. The instruction and education must be completed

1 through a course approved by the Statewide Public Guardian
2 ~~chief judge of the circuit court~~ and taught by an a
3 ~~court-approved~~ organization approved by the Statewide Public
4 Guardian. Approved Court-approved organizations may include,
5 but are not limited to, community or junior colleges,
6 guardianship organizations, and the local bar association or
7 The Florida Bar.

8 Section 2. Paragraph (f) is added to subsection (4) of
9 section 744.3215, Florida Statutes, to read:

10 744.3215 Rights of persons determined incapacitated.--

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

13 (f) Consent to or otherwise direct on behalf of the
14 ward to withdraw or withhold life-prolonging procedures. Any
15 authority exercised under this paragraph must be made in
16 accordance with chapter 765.

17 Section 3. Section 744.702, Florida Statutes, is
18 amended to read:

19 744.702 Legislative findings and intent.--

20 (1) The Legislature finds that private guardianship is
21 inadequate where there is no willing and responsible family
22 member or friend, other person, bank, or corporation available
23 to serve as guardian for an incapacitated person, and such
24 person does not have adequate income or wealth for the
25 compensation of a private guardian. The Legislature intends
26 through this act to establish the Statewide Public
27 Guardianship Office, and require ~~permit~~ the establishment of
28 offices of public guardian for the purpose of providing
29 guardianship services for incapacitated persons when no
30 private guardian is available.

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1 (2) It is, therefore, the intent of the Legislature
2 that by no later than July 1, 2001, there be an office of
3 public guardian established in each judicial circuit, staffed
4 to appropriately manage the demand for public guardianship
5 services in each judicial circuit.The Legislature further
6 finds that alternatives to guardianship and less intrusive
7 means of assistance should always be explored, including, but
8 not limited to, guardian advocates, before an individual's
9 rights are removed through an adjudication of incapacity. The
10 purpose of this legislation is to provide a public guardian
11 only to those persons whose needs cannot be met through less
12 drastic means of intervention and to ensure that each person
13 who needs a guardian and who meets the income and asset
14 limitation, as set forth in s. 744.704, will have access to
15 the court to have his or her need for a guardian addressed.
16 The Legislature finds that the state should properly fund
17 public guardianship services.

18 (3) The Legislature finds that in many instances the
19 appointment of professional guardians to provide pro bono
20 public guardianship services is the only access indigent
21 incapacitated persons have to guardianship services. While the
22 Legislature does not want to discourage the provision of pro
23 bono guardianship services to incapacitated indigent persons
24 by professional guardians, in some instances the pro bono case
25 load of professional guardians is as much as 50 percent,
26 overburdening such professional guardians to the extent that
27 their economic competitiveness is degraded, resulting in the
28 undersupply of guardianship services.

29 (4) The Legislature finds guardianship regulation is
30 currently the responsibility of the courts and that there has
31 been such rapid growth of the need for guardianship services

1 that the court ought to have the administrative burden of
2 guardianship regulation relieved. Accordingly the Statewide
3 Public Guardian is authorized to convene a workgroup
4 consisting of representatives of the court system, attorneys,
5 guardians, and other interested persons for the purpose of
6 developing and recommending a plan for professional
7 guardianship regulation to the Legislature.

8 (5) The Legislature finds that there is no agency
9 available in the state for courts to turn to as a guardianship
10 ombudsman. There are cases in which guardians are appointed,
11 often friends or family members, and the issue is raised,
12 either upon suggestion of the court or by petition of a third
13 party, as to the adequacy of the services provided by the
14 guardian. In such cases there is reason to believe that a
15 disinterested agency should evaluate and report to the court
16 concerning the propriety and appropriateness of the guardian's
17 services. The Legislature finds that it is in the best
18 interest of wards that the Statewide Public Guardianship
19 Office, as guardian ombudsman, have the authority, when
20 appointed, to investigate the conduct of guardians and report
21 its findings to the court that has jurisdiction over the
22 investigated guardian.

23 Section 4. Section 744.7021, Florida Statutes, is
24 amended to read:

25 744.7021 Statewide Public Guardianship Office.--There
26 is ~~hereby~~ created the Statewide Public Guardianship Office
27 within the Department of Elderly Affairs. The Department of
28 Elderly Affairs shall provide administrative support and
29 service to the office to the extent requested by the Statewide
30 Public Guardian ~~executive director~~ within the available
31 resources of the department. The Statewide Public Guardianship

1 Office may request the assistance of the Inspector General of
2 the Department of Elderly Affairs in providing auditing
3 services, and the Office of General Counsel of the department
4 may provide assistance in rulemaking and other matters as
5 needed to assist the Statewide Public Guardianship Office. The
6 Statewide Public Guardianship Office shall not be subject to
7 control, supervision, or direction by the Department of
8 Elderly Affairs in the performance of its duties.

9 (1) The head of the Statewide Public Guardianship
10 Office is the Statewide Public Guardian ~~executive director~~,
11 who shall be appointed by the Governor. The Statewide Public
12 Guardian ~~executive director~~ must be a licensed attorney who
13 has with a background in guardianship law and knowledge of
14 social services available to meet the needs of incapacitated
15 persons, shall serve on a full-time basis, and shall
16 personally, or through representatives of the office, carry
17 out the purposes and functions of the Statewide Public
18 Guardianship Office in accordance with state and federal law.
19 The Statewide Public Guardian ~~executive director~~ shall serve
20 at the pleasure of and report to the Governor and shall be
21 compensated at the same annual salary as public defenders as
22 set by law.

23 (2) The Statewide Public Guardianship Office shall,
24 ~~within available resources,~~ have oversight responsibilities
25 for all public guardians.

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

28 (b) The office, in consultation with local
29 guardianship offices, shall develop statewide performance
30 measures and standards.

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1 (c) The office shall review the various methods of
2 funding guardianship programs, the kinds of services being
3 provided by such programs, and the demographics of the wards.
4 In addition, the office shall review and make recommendations
5 regarding the feasibility of recovering a portion or all of
6 the costs of providing public guardianship services from the
7 assets or income of the wards.

8 (d) ~~No later than October 1, 2000, the office shall~~
9 ~~submit to the Governor, the President of the Senate, the~~
10 ~~Speaker of the House of Representatives, and the Chief Justice~~
11 ~~of the Supreme Court an interim report describing the progress~~
12 ~~of the office in meeting the goals as described in this~~
13 ~~section.~~ No later than January 1, 2001 ~~October 1, 2001~~, the
14 office shall submit to the Governor, the President of the
15 Senate, the Speaker of the House of Representatives, and the
16 Chief Justice of the Supreme Court a proposed public
17 guardianship plan including alternatives for meeting the
18 state's guardianship needs. This plan shall ~~may~~ include
19 recommendations for ~~less than~~ the entire state, ~~may include a~~
20 ~~phase-in system~~, and shall include estimates of the cost of
21 each of the alternatives. Each year thereafter, or as the need
22 exists, the office shall provide a status report and provide
23 further recommendations related to ~~address the need for~~ public
24 guardianship services, guardianship law, guardianship
25 procedure, and related issues.

26 (e) The office may provide assistance to local
27 governments or entities in pursuing grant opportunities. The
28 office shall review and make recommendations in the annual
29 report on the availability and efficacy of seeking Medicaid
30 matching funds. The office shall diligently seek ways to use
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1 existing programs and services to meet the needs of public
2 wards.

3 (f) The office shall develop a guardianship training
4 program. The training program may be offered to all guardians
5 whether public or private. The office shall establish a
6 curriculum committee which shall utilize the recommended
7 minimum content for the professional guardianship course
8 developed by the Florida Guardianship Education Coalition to
9 develop the training program specified in this part. The
10 curriculum committee shall include, but not be limited to,
11 probate judges. A fee may be charged to private guardians in
12 order to defray the cost of providing the training. In
13 addition, a fee may be charged to any training provider for up
14 to the actual cost of the review and approval of their
15 curriculum. Any fees collected pursuant to this paragraph
16 shall be deposited in the Department of Elderly Affairs
17 Administrative Trust Fund to be used for the guardianship
18 training program. In order to facilitate development of
19 guardianship training programs and the establishment of
20 curriculum and in order to have the assistance of academicians
21 in the area of mental health, the office shall be housed at
22 the Louis de la Parte Florida Mental Health Institute on the
23 campus of the University of South Florida. The institute shall
24 provide adequate office space and support services as
25 necessary for the office. The Statewide Public Guardian may
26 establish satellite offices in other areas of the state as
27 necessary.

28 (3) The office may conduct or contract for
29 demonstration projects, within funds appropriated or through
30 gifts, grants, or contributions for such purposes, to
31 determine the feasibility or desirability of new concepts of

1 organization, administration, financing, or service delivery
2 designed to preserve the civil and constitutional rights of
3 persons of marginal or diminished capacity. Any gifts, grants,
4 or contributions for such purposes shall be deposited in the
5 Department of Elderly Affairs Administrative Trust Fund.

6 (4) The Statewide Public Guardian may establish an
7 advisory council for the purpose of facilitating the
8 collection of expertise and assisting in the development of
9 curriculum and training programs for guardians and the
10 proposed public guardianship plan. If an advisory council is
11 created, the advisory council may not consist of more than 12
12 members and shall be established as follows:

13 (a) The council shall include at least one member each
14 representing circuit court judges in probate and guardianship
15 law, the Real Property, Probate and Trust Law Section of The
16 Florida Bar, the Elder Law Section of The Florida Bar, the
17 Florida Association of Public Guardians, licensed physicians
18 specializing in geriatric medicine, the office of the Attorney
19 General as liaison on elder affairs or elder law, the State
20 Office of Long-Term Care Ombudsman, academicians or
21 researchers in the field of geriatrics who are on the faculty
22 of a university, and elder or senior citizens or consumers
23 from the elder or senior citizen community.

24 (b) Council members shall be appointed by the
25 Statewide Public Guardian, except that the elder or senior
26 citizen or consumer from the elder or senior citizen community
27 shall be appointed by the Governor.

28 (c) Council members shall be appointed for 4-year
29 staggered terms, except for any initial lesser term required
30 to achieve staggering. Members may be reappointed for an
31 additional 4-year term.

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

5 (5) In instances in which the court determines that a
6 court monitor, as provided for in s. 744.107, needs to be a
7 disinterested agency from outside the circuit, the court may
8 appoint the Statewide Public Guardian or the designee of the
9 Statewide Public Guardian, except that in no instance may the
10 Statewide Public Guardian designate the local public guardian
11 within the circuit. The Statewide Public Guardian may be
12 awarded a reasonable fee as determined by the court to be paid
13 from the property of the ward.

14 (6)(4) The office has authority to adopt rules
15 pursuant to ss. 120.536(1) and 120.54 to carry out the
16 provisions of this section.

17 Section 5. Section 744.703, Florida Statutes, is
18 amended to read:

19 744.703 Office of public guardian; appointment,
20 notification.--

21 (1) The ~~executive director of the~~ Statewide Public
22 Guardian Guardianship Office, after consultation with the
23 chief judge and other circuit judges within a the judicial
24 circuit and with appropriate advocacy groups and individuals
25 and organizations who are knowledgeable about the needs of
26 incapacitated persons, shall ~~may~~ establish, ~~within a county in~~
27 ~~the judicial circuit or within the judicial circuit,~~ an office
28 of public guardian and ~~if so established,~~ shall create a list
29 of persons best qualified to serve as the public guardian, and
30 such qualifications shall include review pursuant to s.
31 744.3135. The public guardian must have knowledge of the legal

1 process and knowledge of social services available to meet the
2 needs of incapacitated persons. A nonprofit corporation under
3 s. 744.309(5) may be 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) A public guardian appointed under this section may
13 serve more than one circuit; however, there must be an office
14 providing public guardianship services within each judicial
15 circuit served. A public guardian who is not an attorney must
16 be represented by counsel in all guardianship proceedings.

17 (3)~~(2)~~ The Statewide Public Guardian ~~executive~~
18 ~~director~~ shall appoint or contract with a public guardian from
19 the list of candidates described in subsection (1). A public
20 guardian must meet the qualifications for a guardian as
21 prescribed in s. 744.309(1)(a). Upon appointment of a ~~the~~
22 public guardian, the Statewide Public Guardian ~~executive~~
23 ~~director~~ shall notify the chief judge of the judicial circuit
24 and the Chief Justice of the Supreme Court of Florida, in
25 writing, of the appointment.

26 (4)~~(3)~~ If the needs of the county or circuit do not
27 require a full-time public guardian, a part-time public
28 guardian may be appointed at reduced compensation.

29 (5)~~(4)~~ A public guardian, whether full-time or
30 part-time, may not hold any position that would create a
31 conflict of interest.

1 (6)~~(5)~~ The public guardian is to be appointed for a
2 term of 4 years, after which her or his appointment must be
3 reviewed by the Statewide Public Guardian ~~executive director~~,
4 and may be reappointed for a term of up to 4 years. The
5 Statewide Public Guardian ~~executive director~~ may suspend a
6 public guardian with or without the request of the chief
7 judge. If a public guardian is suspended, the Statewide Public
8 Guardian ~~executive director~~ shall appoint an acting public
9 guardian as soon as possible to serve until such time as a
10 permanent replacement is selected. A public guardian may be
11 removed from office during the term of office ~~only~~ by the
12 Statewide Public Guardian ~~executive director~~ who must consult
13 with the chief judge prior to said removal in accordance with
14 ss. 744.474 and 744.477. A recommendation of removal made by
15 the chief judge must be considered by the Statewide Public
16 Guardian ~~executive director~~.

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

27 Section 6. Subsection (1) of section 744.704, Florida
28 Statutes, is amended and subsection (10) is added to said
29 section, to read:

30 744.704 Powers and duties.--

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1 (1) A public guardian may serve as a guardian of a
2 person adjudicated incapacitated under this chapter, as a
3 guardian advocate under chapter 393 or chapter 394:

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

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

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

21 Section 7. Section 744.705, Florida Statutes, is
22 amended to read:

23 744.705 Costs of public guardian.--

24 (1) ~~All~~ Costs of administration, including filing
25 fees, shall be paid from the budget of the office of public
26 guardian. No costs of administration, including filing fees,
27 shall be recovered from the assets or the income of the ward
28 except that the court may award fees in accordance with s.
29 744.108.

30 (2) In any proceeding for appointment of a public
31 guardian, or in any proceeding involving the estate of a ward

1 for whom a public guardian has been appointed guardian, the
2 court may waive any court costs or filing fees.

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

5 744.708 Reports and standards.--

6 (4) Within 6 months of his or her appointment as
7 guardian of a ward, the public guardian shall submit to the
8 clerk of the court for placement in the ward's guardianship
9 file and to the ~~executive director of the~~ Statewide Public
10 Guardian Guardianship Office a report on his or her efforts to
11 locate a family member or friend, other person, bank, or
12 corporation to act as guardian of the ward and a report on the
13 ward's potential to be restored to capacity.

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

20 Section 9. Section 744.709, Florida Statutes, is
21 amended to read:

22 744.709 Surety bond.--Upon taking office, a public
23 guardian shall file a bond with surety as prescribed in s.
24 45.011 to be approved by the clerk, unless bond is waived by
25 the chief judge of the judicial circuit. The bond shall be
26 payable to the Governor and the Governor's successors in
27 office, in the penal sum of not less than \$5,000 nor more than
28 \$25,000, conditioned on the faithful performance of all duties
29 by the guardian. The amount of the bond shall be fixed by the
30 majority of the judges within the judicial circuit. In form
31 the bond shall be joint and several. The bond shall be

1 purchased from the funds of the local office of public
2 guardian.
3 Section 10. This act shall take effect July 1, 2000.
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