

Bill No. CS for CS for CS for SB 686

Amendment No.      Barcode 335246

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Silver moved the following amendment:

**Senate Amendment (with title amendment)**

On page 7, line 12, through  
page 11, line 14, delete those lines

and insert:

Section 1. The guardian ad litem program is transferred to the Statewide Public Guardianship and Children's Representation Office, and each circuit guardian ad litem office is renamed as the Circuit Office of Children's Representation.

Section 2. The Statewide Public Guardianship and Children's Representation Office, in consultation with appropriate parties, including the judicial branch, Office of the Governor, Attorney General, and a representative of the Justice Administrative Commission, shall study the organizational placement of the Statewide Public Guardianship and Children's Representation Office, including the Deputy Director and related staff and the Circuit Offices of Children's Representation, and shall make recommendations

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1 regarding the placement to the Legislature by February 1,  
2 2003.

3           Section 3. Effective October 1, 2002, the guardian ad  
4 litem program in the Office of the State Court Administrator  
5 and in each judicial circuit and all of its statutory powers,  
6 duties, and functions, and its records, personnel, property,  
7 and unexpended balances of appropriations, allocations, or  
8 other funds, are transferred by a type two transfer, as  
9 defined in section 20.06(2), Florida Statutes, to the  
10 Statewide Public Guardianship and Children's Representation  
11 Office. The counties shall continue to fund those existing  
12 elements of the guardian ad litem offices when the offices  
13 become Circuit Offices of Children's Representation. Such  
14 funding shall be consistent with current practice including  
15 providing for additions to office staffing until the  
16 Legislature expressly assumes the responsibility for funding  
17 such elements.

18           Section 4. Subsection (1) of section 25.388, Florida  
19 Statutes, is amended to read:

20           25.388 Family Courts Trust Fund.--

21           (1)(a) The trust fund moneys in the Family Courts  
22 Trust Fund, administered by the Supreme Court, shall be used  
23 to implement family court plans in all judicial circuits of  
24 this state.

25           (b) The Supreme Court, through the Office of the State  
26 Courts Administrator, shall adopt a comprehensive plan for the  
27 operation of the trust fund and the expenditure of any moneys  
28 deposited into the trust fund. The plan shall provide for a  
29 comprehensive integrated response to families in litigation,  
30 including domestic violence matters, the Statewide Public  
31 Guardianship and Children's Representation Office's

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1 representation of children in dependency proceedings ~~guardian~~  
2 ~~ad litem programs~~, mediation programs, legal support,  
3 training, automation, and other related costs incurred to  
4 benefit the citizens of the state and the courts in relation  
5 to family law cases. The trust fund shall be used to fund the  
6 publication of the handbook created pursuant to s. 741.0306.

7 Section 5. Section 744.701, Florida Statutes, is  
8 amended to read:

9 744.701 Short title.--This act ~~shall be known and~~ may  
10 be cited as the "Public Guardianship and Children's  
11 Representation Act."

12 Section 6. Section 744.702, Florida Statutes, is  
13 amended to read:

14 744.702 Legislative intent.--The Legislature finds  
15 that children involved in dependency proceedings and  
16 incapacitated persons are the state's most vulnerable  
17 residents.

18 (1) If a minor child is a party to a dependency  
19 proceeding, every effort should be made to ensure that the  
20 child has representation through a guardian ad litem or legal  
21 counsel. If the child and the child's parents are indigent,  
22 the state should ensure that the child is protected in  
23 dependency proceedings. One of the purposes of this part is to  
24 ensure that the rights and interests of a child who is a party  
25 to a dependency proceeding are protected when those rights and  
26 interests are not otherwise represented.

27 (2) The Legislature finds that private guardianship  
28 for an incapacitated person is inadequate where there is no  
29 willing and responsible family member or friend, other person,  
30 bank, or corporation available to serve as guardian for an  
31 incapacitated person, and such person does not have adequate

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1 income or wealth for the compensation of a private guardian.  
2 The Legislature intends through this act to establish the  
3 Statewide Public Guardianship and Children's Representation  
4 Office, and permit the establishment of offices of public  
5 guardian for the purpose of providing guardianship services  
6 for incapacitated persons when no private guardian is  
7 available. The Legislature further finds that alternatives to  
8 guardianship and less intrusive means of assistance should  
9 always be explored, including, but not limited to, guardian  
10 advocates, before an individual's rights are removed through  
11 an adjudication of incapacity. The purpose of this  
12 legislation is to provide a public guardian only to those  
13 persons whose needs cannot be met through less drastic means  
14 of intervention.

15 Section 7. Section 744.7021, Florida Statutes, is  
16 amended to read:

17 744.7021 Statewide Public Guardianship and Children's  
18 Representation Office.--There is ~~hereby~~ created the Statewide  
19 Public Guardianship and Children's Representation 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 executive  
23 director within the available resources of the department. The  
24 Statewide Public Guardianship and Children's Representation  
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 and  
30 Children's Representation Office. The Statewide Public  
31 Guardianship and Children's Representation Office shall not be

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1 subject to control, supervision, or direction by the  
2 Department of Elderly Affairs in the performance of its  
3 duties.

4 (1) The head of the Statewide Public Guardianship and  
5 Children's Representation Office is the executive director,  
6 who shall be appointed by the Governor for a term of 3 years  
7 and who shall report to the Governor. The executive director  
8 must be a licensed attorney who has experience in managing  
9 legal services or similar management experience. The executive  
10 director shall appoint a deputy director of the Children's  
11 Representation Program and a deputy director of the Statewide  
12 Public Guardianship Program. The deputy director of the  
13 Children's Representation Program must be a licensed attorney  
14 who is knowledgeable in dependency law and has experience in  
15 managing the provision of legal services. The deputy director  
16 of the Statewide Public Guardianship Program must be a  
17 licensed attorney with a background in guardianship law and  
18 knowledge of social services available to meet the needs of  
19 incapacitated persons., ~~shall serve on a full-time basis, and~~  
20 ~~shall personally, or through representatives of the office,~~  
21 ~~carry out the purposes and functions of the Statewide Public~~  
22 ~~Guardianship Office in accordance with state and federal law.~~  
23 ~~The executive director shall serve at the pleasure of and~~  
24 ~~report to the Governor.~~

25 (2) The Statewide Public Guardianship and Children's  
26 Representation Office shall, within available resources, have  
27 oversight responsibilities for all public guardians.

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

30 (b) The office, in consultation with local  
31 guardianship offices, shall develop statewide performance

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1 measures and standards.

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

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

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

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1           (f) The office shall develop a guardianship training  
2 program. The training program may be offered to all guardians  
3 whether public or private. The office shall establish a  
4 curriculum committee to develop the training program specified  
5 in this part. The curriculum committee shall include, but not  
6 be limited to, probate judges. A fee may be charged to private  
7 guardians in order to defray the cost of providing the  
8 training. In addition, a fee may be charged to any training  
9 provider for up to the actual cost of the review and approval  
10 of their curriculum. Any fees collected pursuant to this  
11 paragraph shall be deposited in the Department of Elderly  
12 Affairs Administrative Trust Fund to be used for the  
13 guardianship training program.

14           (3)(a) The office shall establish standards for  
15 representation of children by the Circuit Offices of  
16 Children's Representation, including recommended case loads  
17 for attorneys and for volunteers and staff lay representatives  
18 of a child.

19           (b) The office shall document the need for child  
20 representation throughout the state and report annually on  
21 October 1 to the Legislature concerning the need and the cost  
22 to adequately provide representation for children in  
23 dependency proceedings. The report must include information  
24 concerning the type and level of advocacy provided in prior  
25 years by both public entities and private entities providing  
26 contract or pro bono services.

27           (c) The office shall develop performance measures and  
28 standards for its services throughout the state and shall  
29 annually report on the performance of the Circuit Offices of  
30 Children's Representation.

31           (d) The office shall establish a Circuit Office of

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1 Children's Representation in each judicial circuit in the  
2 state. Each circuit office shall consist of an administrator,  
3 staff or pro bono attorneys, social workers, volunteer  
4 coordinators, volunteer or staff lay representatives for  
5 children, and support staff. The administrator in each office  
6 must be knowledgeable and proficient in the legal process and  
7 the legal representation of children in court proceedings, as  
8 well as discovery and mediation processes.

9 (e) Each Circuit Office of Children's Representation  
10 may provide and coordinate the provision of legal  
11 representation of children in each aspect of dependency  
12 proceedings when the child and the child's parents are  
13 indigent pursuant to s. 27.52 or the child's rights are not  
14 otherwise protected. The office must provide representation  
15 for each child not otherwise represented who is a party to a  
16 dependency proceeding.

17 (f) If a Circuit Office of Children's Representation  
18 is appointed to represent a child, a staff or volunteer  
19 representative and a staff or pro bono attorney shall be  
20 assigned to provide the office's representation of the best  
21 interests of the child.

22 (g) To the extent possible, the Statewide Public  
23 Guardianship and Children's Representation Office or the  
24 Circuit Offices of Children's Representation may augment staff  
25 through agreements or contracts with the public defenders,  
26 private entities, or public or private colleges or  
27 universities for contract or pro bono legal representation to  
28 children as court-appointed counsel for the child, to provide  
29 pro bono representation to the office, or to provide non-legal  
30 volunteer representation.

31 (h) The Statewide Public Guardianship and Children's



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1 Representation Office and each Circuit Office of Children's  
2 Representatives may establish a not-for-profit support  
3 organization under section 501(c)(3) of the Internal Revenue  
4 Code to assist in funding the needs of children receiving  
5 services through the Circuit Offices of Children's  
6 Representation.

7       ~~(4)(3)~~ The office may conduct or contract for  
8 demonstration projects, within funds appropriated or through  
9 gifts, grants, or contributions for such purposes, to  
10 determine the feasibility or desirability of new concepts of  
11 organization, administration, financing, or service delivery  
12 designed to preserve the civil and constitutional rights of  
13 persons of marginal or diminished capacity. Any gifts, grants,  
14 or contributions for such purposes shall be deposited in the  
15 Department of Elderly Affairs Administrative Trust Fund.

16       ~~(5)(4)~~ The office has authority to adopt rules  
17 pursuant to ss. 120.536(1) and 120.54 to carry out the  
18 provisions of this section.

19       Section 8. Subsections (1) and (6) of section 744.703,  
20 Florida Statutes, are amended to read:

21       744.703 Office of public guardian; appointment,  
22 notification.--

23       (1) The executive director of the Statewide Public  
24 Guardianship and Children's Representation Office, after  
25 consultation with the chief judge and other circuit judges  
26 within the judicial circuit and with appropriate advocacy  
27 groups and individuals and organizations who are knowledgeable  
28 about the needs of incapacitated persons, may establish,  
29 within a county in the judicial circuit or within the judicial  
30 circuit, an office of public guardian and if so established,  
31 shall create a list of persons best qualified to serve as the

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1 public guardian, and such qualifications shall include review  
2 pursuant to s. 744.3135. The public guardian must have  
3 knowledge of the legal process and knowledge of social  
4 services available to meet the needs of incapacitated persons.  
5 A nonprofit corporation under s. 744.309(5) may be appointed  
6 public guardian only if:

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

9 (b) It maintains a staff of professionally qualified  
10 individuals to carry out the guardianship functions, including  
11 a staff attorney who has experience in probate areas and  
12 another person who has a master's degree in social work, or a  
13 gerontologist, psychologist, registered nurse, or nurse  
14 practitioner.

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

25 Section 9. Section 744.706, Florida Statutes, is  
26 amended to read:

27 744.706 Preparation of budget.--Each public guardian,  
28 whether funded in whole or in part by money raised through  
29 local efforts, grants, or any other source or whether funded  
30 in whole or in part by the state, shall prepare a budget for  
31 the operation of the office of public guardian to be submitted

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1 to the Statewide Public Guardianship and Children's  
2 Representation Office. As appropriate, the Statewide Public  
3 Guardianship and Children's Representation Office will include  
4 such budgetary information in the Department of Elderly  
5 Affairs' legislative budget request. The office of public  
6 guardian shall be operated within the limitations of the  
7 General Appropriations Act and any other funds appropriated by  
8 the Legislature to that particular judicial circuit, subject  
9 to the provisions of chapter 216. The Department of Elderly  
10 Affairs shall make a separate and distinct request for an  
11 appropriation for the Statewide Public Guardianship and  
12 Children's Representation Office. However, this section does  
13 ~~shall not be construed to~~ preclude the financing of any  
14 operations of the office of the public guardian by moneys  
15 raised through local effort or through the efforts of the  
16 Statewide Public Guardianship and Children's Representation  
17 Office.

18 Section 10. Section 744.707, Florida Statutes, is  
19 amended to read:

20 744.707 Procedures and rules.--The public guardian,  
21 subject to the oversight of the Statewide Public Guardianship  
22 and Children's Representation Office, is authorized to:

23 (1) Formulate and adopt necessary procedures to assure  
24 the efficient conduct of the affairs of the ward and general  
25 administration of the office and staff.

26 (2) Contract for services necessary to discharge the  
27 duties of the office.

28 (3) Accept the services of volunteer persons or  
29 organizations and provide reimbursement for proper and  
30 necessary expenses.

31 Section 11. Subsections (3), (4), (5), (7), and (8) of

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1 section 744.708, Florida Statutes, are amended to read:

2 744.708 Reports and standards.--

3 (3) A public guardian shall file an annual report on  
4 the operations of the office of public guardian, in writing,  
5 by September 1 for the preceding fiscal year with the  
6 Statewide Public Guardianship and Children's Representation  
7 Office, which shall have responsibility for supervision of the  
8 operations of the office of public guardian.

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

18 (5) An independent audit by a qualified certified  
19 public accountant shall be performed at least every 2 years.  
20 The audit should include an investigation into the practices  
21 of the office for managing the person and property of the  
22 wards. A copy of the report shall be submitted to the  
23 Statewide Public Guardianship and Children's Representation  
24 Office. In addition, the office of public guardian shall be  
25 subject to audits or examinations by the Auditor General and  
26 the Office of Program Policy Analysis and Government  
27 Accountability pursuant to law.

28 (7) The ratio for professional staff to wards shall be  
29 1 professional to 40 wards. The Statewide Public Guardianship  
30 and Children's Representation Office may increase or decrease  
31 the ratio after consultation with the local public guardian

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1 and the chief judge of the circuit court. The basis of the  
2 decision to increase or decrease the prescribed ratio shall be  
3 reported in the annual report to the Governor, the President  
4 of the Senate, the Speaker of the House of Representatives,  
5 and the Chief Justice of the Supreme Court.

6 (8) The term "professional," for purposes of this  
7 part, shall not include the public guardian nor the executive  
8 director of the Statewide Public Guardianship and Children's  
9 Representation Office. The term "professional" shall be  
10 limited to those persons who exercise direct supervision of  
11 individual wards under the direction of the public guardian.

12 Section 12. Section 744.7081, Florida Statutes, is  
13 amended to read:

14 744.7081 Access to records by Statewide Public  
15 Guardianship and Children's Representation Office;  
16 confidentiality.--Notwithstanding any other provision of law  
17 to the contrary, any medical, financial, or mental health  
18 records held by an agency, or the court and its agencies,  
19 which are necessary to evaluate the public guardianship  
20 system, to assess the need for additional public guardianship,  
21 or to develop required reports, shall be provided to the  
22 Statewide Public Guardianship and Children's Representation  
23 Office upon that office's request. Any confidential or exempt  
24 information provided to the Statewide Public Guardianship and  
25 Children's Representation Office shall continue to be held  
26 confidential or exempt as otherwise provided by law. All  
27 records held by the Statewide Public Guardianship and  
28 Children's Representation Office relating to the medical,  
29 financial, or mental health of vulnerable adults as defined in  
30 chapter 415, persons with a developmental disability as  
31 defined in chapter 393, or persons with a mental illness as

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1 defined in chapter 394, shall be confidential and exempt from  
2 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.  
3 This section is subject to the Open Government Sunset Review  
4 Act of 1995 in accordance with s. 119.15, and shall stand  
5 repealed on October 2, 2004, unless reviewed and saved from  
6 repeal through reenactment by the Legislature.

7 Section 13. Subsection (6) of section 400.148, Florida  
8 Statutes, is amended to read:

9 400.148 Medicaid "Up-or-Out" Quality of Care Contract  
10 Management Program.--

11 (6) The agency shall, jointly with the Statewide  
12 Public Guardianship and Children's Representation Office,  
13 develop a system in the pilot project areas to identify  
14 Medicaid recipients who are residents of a participating  
15 nursing home or assisted living facility who have diminished  
16 ability to make their own decisions and who do not have  
17 relatives or family available to act as guardians in nursing  
18 homes listed on the Nursing Home Guide Watch List. The agency  
19 and the Statewide Public Guardianship and Children's  
20 Representation Office shall give such residents priority for  
21 publicly funded guardianship services.

22  
23 (Redesignate subsequent sections.)

24  
25  
26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 On page 1, line 5, through  
29 page 2, line 4, delete those lines

30  
31 and insert:

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1 Public Guardianship and Children's  
2 Representation Office; renaming each guardian  
3 ad litem office as a Circuit Office of  
4 Children's Representation; providing for a  
5 study to determine the organizational placement  
6 of the Statewide Public Guardianship and  
7 Children's Representation Office and Circuit  
8 Children's Representation Offices with  
9 recommendations to the Legislature by a  
10 specified date; providing for county funding of  
11 program elements; amending s. 25.388, F.S.;  
12 including the Statewide Public Guardianship and  
13 Children's Representation Office as recipients  
14 of moneys from the Family Courts Trust Funds;  
15 amending s. 744.701, F.S.; redesignating the  
16 Public Guardianship Act as the "Public  
17 Guardianship and Children's Representation  
18 Act"; amending s. 744.702, F.S.; providing  
19 legislative intent with respect to children  
20 involved in dependency proceedings and  
21 incapacitated persons; amending s. 744.7021,  
22 F.S.; establishing the Statewide Public  
23 Guardianship and Children's Representation  
24 Office within the Department of Elderly  
25 Affairs; providing a term of office and  
26 qualifications for the executive director;  
27 providing for appointment of deputy directors;  
28 providing qualifications for deputy directors;  
29 requiring the Statewide Public Guardianship and  
30 Children's Representation Office to establish  
31 standards for the representation of children;

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1           requiring an annual report to the Legislature;  
2           requiring the office to establish a Circuit  
3           Office of Children's Representation in each  
4           judicial circuit; authorizing the circuit  
5           offices to provide and coordinate the provision  
6           of legal services for children when private  
7           representation is unavailable; requiring the  
8           circuit offices to provide representation for  
9           children in dependency proceedings; providing  
10          for appointing a lay representative and an  
11          attorney to represent the best interest of the  
12          child; authorizing the Statewide Public  
13          Guardianship and Children's Representation  
14          Office or the Circuit Offices of Children's  
15          Representation to establish a nonprofit  
16          organization to assist in funding the services  
17          provided to children; amending ss. 744.703,  
18          744.706, 744.707, 744.708, 744.7081, 400.148,  
19          F.S., relating to the office of public  
20          guardian, budget, procedures and rules, reports  
21          and standards, access to records, and Medicaid  
22          contracts; conforming provisions to changes  
23          made by the act;

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