

1                   A bill to be entitled  
2           An act relating to guardianship; amending s. 744.102,  
3           F.S.; defining the terms "audit" and "surrogate guardian";  
4           amending s. 744.1083, F.S.; providing that the Statewide  
5           Public Guardianship Office need not review credit and  
6           criminal investigations from a college or university  
7           before registering the institution as a professional  
8           guardian; amending s. 744.301, F.S.; providing that in the  
9           event of death, the surviving parent is the sole natural  
10          guardian of a minor; prohibiting a natural guardian from  
11          using the property of the ward for the guardian's benefit  
12          without a court order; creating s. 744.3025, F.S.;  
13          authorizing a court to appoint a guardian ad litem to  
14          represent a minor's interest in certain claims that exceed  
15          a specified amount; requiring a court to appoint a  
16          guardian ad litem to represent a minor's interest in  
17          certain claims that exceed a specified amount; providing  
18          that a court need not appoint a guardian ad litem under  
19          certain circumstances; requiring a court to award  
20          reasonable fees and costs to the guardian ad litem;  
21          amending s. 744.3031, F.S.; increasing the time an  
22          emergency temporary guardian may serve to 90 days;  
23          authorizing an extension; requiring an emergency temporary  
24          guardian to file a final report; providing for the  
25          contents of the final report; amending s. 744.304, F.S.;  
26          specifying the persons who may file a petition for a  
27          standby guardian; requiring that notice of the appointment  
28          hearing be served on the ward's next of kin; clarifying

29 | when a standby guardian may assume the duties of guardian;  
30 | requiring that each standby guardian submit to credit and  
31 | criminal background checks; amending s. 744.3115, F.S.;  
32 | providing a definition; amending s. 744.3135, F.S.;  
33 | providing procedures for completing a guardians' criminal  
34 | background investigation; authorizing a guardian to use  
35 | inkless electronic fingerprinting equipment that is  
36 | available for background investigations of public  
37 | employees; providing that a guardian need not be  
38 | rescreened if he or she uses certain inkless electronic  
39 | fingerprinting equipment; requiring the Statewide Public  
40 | Guardianship Office to adopt a rule for credit  
41 | investigations of guardians; amending s. 744.3145, F.S.;  
42 | reducing the time in which a guardian must complete the  
43 | education courses from 1 year to 4 months; amending s.  
44 | 744.3215, F.S.; providing that an incapacitated person  
45 | retains the right to receive necessary services and  
46 | rehabilitation necessary to maximize the quality of the  
47 | person's life; amending s. 744.331, F.S.; requiring that  
48 | the court appoint an attorney from a specified registry;  
49 | requiring attorneys to complete certain training programs;  
50 | providing that a member of the examining committee may not  
51 | be related to or associated with certain persons;  
52 | prohibiting a person who served on an examining committee  
53 | from being appointed as the guardian; requiring each  
54 | member of an examining committee to file an affidavit  
55 | stating that he or she has completed the mandatory  
56 | training; providing for training programs; requiring each

57 member to report the time and date that he or she examined  
58 the person alleged to be incapacitated; providing for an  
59 award of attorney's fees; amending s. 744.341, F.S.;  
60 requiring the voluntary guardian to include certain  
61 information in the annual report; requiring that certain  
62 specified information be included in the notice to  
63 terminate a voluntary guardianship; amending s. 744.361,  
64 F.S.; requiring a professional guardian to ensure that  
65 each of his or her wards is personally visited at least  
66 quarterly; providing for the assessment of certain  
67 conditions during the personal visit; amending s. 744.365,  
68 F.S.; requiring that the verified inventory include  
69 information on any trust to which a ward is a beneficiary;  
70 amending s. 744.367, F.S.; requiring that the annual  
71 report of the guardian be filed on or before a specified  
72 date; amending s. 744.3675, F.S.; requiring that the  
73 annual guardianship plan include information on the mental  
74 condition of the ward; providing for an annual  
75 guardianship plan for wards who are minors; amending s.  
76 744.3678, F.S.; providing that property of the ward which  
77 is not under the control of the guardian, including  
78 certain trusts, is not subject to annual accounting;  
79 requiring certain documentation for the annual accounting;  
80 amending s. 744.3679, F.S.; removing a provision  
81 prohibiting the clerk of court from having responsibility  
82 for monitoring or auditing accounts in certain cases;  
83 amending s. 744.368, F.S.; requiring that the verified  
84 inventory and the accountings be audited within a

85 | specified time period; amending s. 744.441, F.S. ;  
86 | requiring the court to retain oversight for assets of a  
87 | ward transferred to a trust; creating s. 744.442, F.S. ;  
88 | providing that a guardian may designate a surrogate  
89 | guardian to exercise the powers of the guardian if the  
90 | guardian is unavailable to act; requiring the surrogate  
91 | guardian to be a professional guardian; providing the  
92 | procedures to be used in appointing a surrogate guardian;  
93 | providing the duties of a surrogate guardian; requiring  
94 | the guardian to be liable for the acts of the surrogate  
95 | guardian; authorizing the guardian to terminate the  
96 | services of the surrogate guardian by filing a written  
97 | notice of the termination with the court; amending s.  
98 | 744.464, F.S. ; removing the state attorney from the list  
99 | of persons to be served a notice of a hearing on  
100 | restoration of capacity; removing a time limitation on the  
101 | filing of a suggestion of capacity; amending s. 744.511,  
102 | F.S. ; providing that a ward who is a minor need not be  
103 | served with the final report of a removed guardian;  
104 | amending s. 744.527, F.S. ; providing that final reports  
105 | for a deceased ward be filed at a specified time; amending  
106 | s. 744.528, F.S. ; providing for a notice of the hearing  
107 | for objections to a report filed by a guardian; amending  
108 | s. 744.708, F.S. ; requiring a public guardian to ensure  
109 | that each of his or her wards is personally visited at  
110 | least quarterly; providing for the assessment of certain  
111 | conditions during the personal visit; amending s. 765.101,  
112 | F.S. ; redefining the term "health care decision" to

113 include informed consent for mental health treatment  
 114 services; amending s. 28.345, F.S.; exempting a public  
 115 guardian from paying court-related fees and charges;  
 116 amending ss. 121.091, 709.08, and 744.1085, F.S.;  
 117 conforming cross references; reenacting s. 117.107(4),  
 118 F.S., relating to prohibited acts of a notary public, to  
 119 incorporate the amendment made to s. 744.3215, F.S., in a  
 120 reference thereto; amending s. 318.18, F.S.; authorizing a  
 121 county to impose a surcharge on certain civil penalties to  
 122 fund local participation in the public guardianship  
 123 program; prescribing prerequisites for imposing the  
 124 surcharge; providing a limit on the surcharge; creating s.  
 125 938.065, F.S.; requiring that a specified surcharge be  
 126 assessed against all misdemeanor offenses; providing that  
 127 the clerk of the court may retain a service charge;  
 128 directing that the funds collected be used to fund public  
 129 guardianship programs; providing an effective date.

130

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

132

133 Section 1. Section 744.102, Florida Statutes, is amended  
 134 to read:

135 744.102 Definitions.--As used in this chapter, the term:

136 (1) "Attorney for the alleged incapacitated person" means  
 137 an attorney who represents the alleged incapacitated person. The  
 138 ~~Such~~ attorney shall represent the expressed wishes of the  
 139 alleged incapacitated person to the extent it is consistent with  
 140 the rules regulating The Florida Bar.

141           (2) "Audit" means a systematic review of financial  
 142 documents with adherence to generally accepted auditing  
 143 standards.

144           ~~(3)(2)~~ "Clerk" means the clerk or deputy clerk of the  
 145 court.

146           ~~(4)(3)~~ "Corporate guardian" means a corporation authorized  
 147 to exercise fiduciary or guardianship powers in this state and  
 148 includes a nonprofit corporate guardian.

149           ~~(5)(4)~~ "Court" means the circuit court.

150           ~~(6)(5)~~ "Court monitor" means a person appointed by the  
 151 court under ~~pursuant to~~ s. 744.107 to provide the court with  
 152 information concerning a ward.

153           ~~(7)(6)~~ "Estate" means the property of a ward subject to  
 154 administration.

155           ~~(8)(7)~~ "Foreign guardian" means a guardian appointed in  
 156 another state or country.

157           ~~(9)(8)~~ "Guardian" means a person who has been appointed by  
 158 the court to act on behalf of a ward's person or property, or  
 159 both.

160           (a) "Limited guardian" means a guardian who has been  
 161 appointed by the court to exercise the legal rights and powers  
 162 specifically designated by court order entered after the court  
 163 has found that the ward lacks the capacity to do some, but not  
 164 all, of the tasks necessary to care for his or her person or  
 165 property, or after the person has voluntarily petitioned for  
 166 appointment of a limited guardian.

167           (b) "Plenary guardian" means a person who has been  
 168 appointed by the court to exercise all delegable legal rights

169 and powers of the ward after the court has found that the ward  
 170 lacks the capacity to perform all of the tasks necessary to care  
 171 for his or her person or property.

172 (10)~~(9)~~ "Guardian ad litem" means a person who is  
 173 appointed by the court having jurisdiction of the guardianship  
 174 or a court in which a particular legal matter is pending to  
 175 represent a ward in that proceeding.

176 (11)~~(10)~~ "Guardian advocate" means a person appointed by a  
 177 written order of the court to represent a person with  
 178 developmental disabilities under s. 393.12. As used in this  
 179 chapter, the term does not apply to a guardian advocate  
 180 appointed for a person determined incompetent to consent to  
 181 treatment under s. 394.4598.

182 (12)~~(11)~~ "Incapacitated person" means a person who has  
 183 been judicially determined to lack the capacity to manage at  
 184 least some of the property or to meet at least some of the  
 185 essential health and safety requirements of the ~~such~~ person.

186 (a) To "manage property" means to take those actions  
 187 necessary to obtain, administer, and dispose of real and  
 188 personal property, intangible property, business property,  
 189 benefits, and income.

190 (b) To "meet essential requirements for health or safety"  
 191 means to take those actions necessary to provide the health  
 192 care, food, shelter, clothing, personal hygiene, or other care  
 193 without which serious and imminent physical injury or illness is  
 194 more likely than not to occur.

195 (13)~~(12)~~ "Minor" means a person under 18 years of age  
 196 whose disabilities have not been removed by marriage or

197 otherwise.

198 (14)~~(13)~~ "Next of kin" means those persons who would be  
 199 heirs at law of the ward or alleged incapacitated person if the  
 200 ~~such~~ person were deceased and includes the lineal descendants of  
 201 the ~~such~~ ward or alleged incapacitated person.

202 (15)~~(14)~~ "Nonprofit corporate guardian" means a nonprofit  
 203 corporation organized for religious or charitable purposes and  
 204 existing under the laws of this state.

205 (16)~~(15)~~ "Preneed guardian" means a person named in a  
 206 written declaration to serve as guardian in the event of the  
 207 incapacity of the declarant as provided in s. 744.3045.

208 (17)~~(16)~~ "Professional guardian" means any guardian who  
 209 ~~receives or has at any time received compensation for services~~  
 210 rendered services to three or more ~~than two~~ wards as their  
 211 guardian. A person serving as a guardian for two or more  
 212 relatives as defined in s. 744.309(2) is not considered a  
 213 professional guardian. A public guardian shall be considered a  
 214 professional guardian for purposes of regulation, education, and  
 215 registration.

216 (18)~~(17)~~ "Property" means both real and personal property  
 217 or any interest in it and anything that may be the subject of  
 218 ownership.

219 (19)~~(18)~~ "Standby guardian" means a person empowered to  
 220 assume the duties of guardianship upon the death or adjudication  
 221 of incapacity of the last surviving natural or appointed  
 222 guardian.

223 (20) "Surrogate guardian" means a guardian designated  
 224 according to s. 744.442.

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225        ~~(21)(19)~~ "Totally incapacitated" means incapable of  
 226 exercising any of the rights enumerated in s. 744.3215(2) and  
 227 (3).

228        ~~(22)(20)~~ "Ward" means a person for whom a guardian has  
 229 been appointed.

230        Section 2. Subsection (10) of section 744.1083, Florida  
 231 Statutes, is amended to read:

232        744.1083 Professional guardian registration.--

233        (10) A state college or university or an independent  
 234 college or university described in s. 1009.98(3)(a), may, but is  
 235 not required to, register as a professional guardian under this  
 236 section. If a state college or university or independent college  
 237 or university elects to register as a professional guardian  
 238 under this subsection, the requirements of subsections (3) and  
 239 (4) ~~subsection (3)~~ do not apply and the registration must  
 240 include only the name, address, and employer identification  
 241 number of the registrant.

242        Section 3. Section 744.301, Florida Statutes, is amended  
 243 to read:

244        744.301 Natural guardians.--

245        (1) The mother and father jointly are natural guardians of  
 246 their own children and of their adopted children, during  
 247 minority. If one parent dies, the surviving parent remains the  
 248 sole natural guardian even if he or she ~~the natural guardianship~~  
 249 ~~shall pass to the surviving parent, and the right shall continue~~  
 250 ~~even though the surviving parent remarries.~~ If the marriage  
 251 between the parents is dissolved, the natural guardianship  
 252 belongs ~~shall belong~~ to the parent to whom ~~the~~ custody of the

253 child is awarded. If the parents are given joint custody, then  
 254 both ~~shall~~ continue as natural guardians. If the marriage is  
 255 dissolved and neither the father nor the mother is given custody  
 256 of the child, neither shall act as natural guardian of the  
 257 child. The mother of a child born out of wedlock is the natural  
 258 guardian of the child and is entitled to primary residential  
 259 care and custody of the child unless a court of competent  
 260 jurisdiction enters an order stating otherwise.

261 (2) ~~The Natural guardian or~~ guardians are authorized, on  
 262 behalf of any of their minor children, to settle and consummate  
 263 a settlement of any claim or cause of action accruing to any of  
 264 their minor children for damages to the person or property of  
 265 any of said minor children and to collect, receive, manage, and  
 266 dispose of the proceeds of any such settlement and ~~of any other~~  
 267 real or personal property distributed from an estate or trust or  
 268 proceeds from a life insurance policy to, or otherwise accruing  
 269 to the benefit of, the child during minority, when the amounts  
 270 received, in the aggregate, do amount involved in any instance  
 271 ~~does~~ not exceed \$15,000, without appointment, authority, or  
 272 bond.

273 (3) All instruments executed by a natural guardian for the  
 274 benefit of the ward under the powers specified ~~provided for~~ in  
 275 subsection (2) shall be binding on the ward. The natural  
 276 guardian may not, without a court order, use the property of the  
 277 ward for the guardian's benefit or to satisfy the guardian's  
 278 support obligation to the ward.

279 (4)(a) ~~In any case where a minor has a claim for personal~~  
 280 ~~injury, property damage, or wrongful death in which the gross~~

281 ~~settlement for the claim of the minor exceeds \$15,000, the court~~  
 282 ~~may, prior to the approval of the settlement of the minor's~~  
 283 ~~claim, appoint a guardian ad litem to represent the minor's~~  
 284 ~~interests. In any case in which the gross settlement involving a~~  
 285 ~~minor equals or exceeds \$25,000, the court shall, prior to the~~  
 286 ~~approval of the settlement of the minor's claim, appoint a~~  
 287 ~~guardian ad litem to represent the minor's interests. The~~  
 288 ~~appointment of the guardian ad litem must be without the~~  
 289 ~~necessity of bond or a notice. The duty of the guardian ad litem~~  
 290 ~~is to protect the minor's interests. The procedure for carrying~~  
 291 ~~out that duty is as prescribed in the Florida Probate Rules. If~~  
 292 ~~a legal guardian of the minor has previously been appointed and~~  
 293 ~~has no potential adverse interest to the minor, the court may~~  
 294 ~~not appoint a guardian ad litem to represent the minor's~~  
 295 ~~interests, unless the court determines that the appointment is~~  
 296 ~~otherwise necessary.~~

297 ~~(b) Unless waived, the court shall award reasonable fees~~  
 298 ~~and costs to the guardian ad litem to be paid out of the gross~~  
 299 ~~proceeds of the settlement.~~

300 Section 4. Section 744.3025, Florida Statutes, is created  
 301 to read:

302 744.3025 Claims of minors.--

303 (1)(a) The court may appoint a guardian ad litem to  
 304 represent the minor's interest before approving a settlement of  
 305 the minor's portion of the claim in any case in which a minor  
 306 has a claim for personal injury, property damage, wrongful  
 307 death, or other cause of action in which the gross settlement of  
 308 the claim exceeds \$15,000.

309           (b) The court shall appoint a guardian ad litem to  
 310 represent the minor's interest before approving a settlement of  
 311 the minor's claim in any case in which the gross settlement  
 312 involving a minor equals or exceeds \$50,000.

313           (c) The appointment of the guardian ad litem must be  
 314 without the necessity of bond or notice.

315           (d) The duty of the guardian ad litem is to protect the  
 316 minor's interests as described in the Florida Probate Rules.

317           (e) A court need not appoint a guardian ad litem for the  
 318 minor if a guardian of the minor has previously been appointed  
 319 and that guardian has no potential adverse interest to the  
 320 minor. A court may appoint a guardian ad litem if the court  
 321 believes a guardian ad litem is necessary to protect the  
 322 interests of the minor.

323           (2) Unless waived, the court shall award reasonable fees  
 324 and costs to the guardian ad litem to be paid out of the gross  
 325 proceeds of the settlement.

326           Section 5. Subsection (3) of section 744.3031, Florida  
 327 Statutes, is amended, and subsection (8) is added to said  
 328 section, to read:

329           744.3031 Emergency temporary guardianship.--

330           (3) The authority of an emergency temporary guardian  
 331 expires 90 ~~60~~ days after the date of appointment or when a  
 332 guardian is appointed, whichever occurs first. The authority of  
 333 the emergency temporary guardian may be extended for an  
 334 additional 90 ~~30~~ days upon a showing that the emergency  
 335 conditions still exist.

336           (8)(a) An emergency temporary guardian shall file a final

337 report no later than 30 days after the expiration of the  
338 emergency temporary guardianship.

339 (b) An emergency temporary guardian is a guardian for the  
340 property. The final report must consist of a verified inventory  
341 of the property, as provided in s. 744.365, as of the date the  
342 letters of emergency temporary guardianship were issued, a final  
343 accounting that gives a full and correct account of the receipts  
344 and disbursements of all the property of the ward over which the  
345 guardian had control, and a statement of the property of the  
346 ward on hand at the end of the emergency temporary guardianship.  
347 If the emergency temporary guardian becomes the successor  
348 guardian of the property, the final report must satisfy the  
349 requirements of the initial guardianship report for the guardian  
350 of the property as provided in s. 744.362.

351 (c) If the emergency temporary guardian is a guardian of  
352 the person, the final report must summarize the activities of  
353 the temporary guardian with regard to residential placement,  
354 medical condition, mental health and rehabilitative services,  
355 and the social condition of the ward to the extent of the  
356 authority granted to the temporary guardian in the letters of  
357 guardianship. If the emergency temporary guardian becomes the  
358 successor guardian of the person, the report must satisfy the  
359 requirements of the initial report for a guardian of the person  
360 as stated in s. 744.362.

361 (d) A copy of the final report of the emergency temporary  
362 guardianship shall be served on the successor guardian and the  
363 ward.

364 Section 6. Section 744.304, Florida Statutes, is amended

365 to read:

366 744.304 Standby guardianship.--

367 (1) Upon a petition by the natural guardians or a guardian  
 368 appointed under s. 744.3021, the court may appoint a standby  
 369 guardian of the person or property of a minor ~~or consent of both~~  
 370 ~~parents, natural or adoptive, if living, or of the surviving~~  
 371 ~~parent, a standby guardian of the person or property of a minor~~  
 372 ~~may be appointed by the court.~~ The court may also appoint an  
 373 alternate to the guardian to act if the standby guardian does  
 374 not serve or ceases to serve after appointment. Notice of a  
 375 hearing on the petition must be served on the parents, natural  
 376 or adoptive, and on any guardian currently serving unless the  
 377 notice is waived in writing by them or waived by the court for  
 378 good cause shown ~~shall renounce, die, or become incapacitated~~  
 379 ~~after the death of the last surviving parent of the minor.~~

380 (2) Upon petition of a currently serving guardian, a  
 381 standby guardian of the person or property of an incapacitated  
 382 person may be appointed by the court. Notice of the hearing  
 383 shall be served on the ward's next of kin.

384 (3) The standby guardian or alternate shall be empowered  
 385 to assume the duties of guardianship ~~his or her office~~  
 386 immediately on the death, removal, or resignation of the  
 387 guardian of a minor, or on the death or adjudication of  
 388 incapacity of the last surviving natural guardian ~~or adoptive~~  
 389 ~~parent~~ of a minor, or upon the death, removal, or resignation of  
 390 the guardian for an adult. The; ~~however, such a~~ guardian of the  
 391 ward's property may not be empowered to deal with the ward's  
 392 property, other than to safeguard it, before ~~prior to~~ issuance

393 of letters of guardianship. If the ward ~~incapacitated person~~ is  
 394 over the age of 18 years, the court shall conduct a hearing as  
 395 provided in s. 744.331 before confirming the appointment of the  
 396 standby guardian, unless the ward has previously been found to  
 397 be incapacitated.

398 (4) Within 20 days after assumption of duties as guardian,  
 399 a standby guardian shall petition for confirmation of  
 400 appointment. If the court finds the standby guardian to be  
 401 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309 and  
 402 744.312, appointment of the guardian must be confirmed. Each  
 403 guardian so confirmed shall file an oath in accordance with s.  
 404 744.347, ~~and~~ shall file a bond, and shall submit to a credit and  
 405 criminal investigation as set forth in s. 744.3135, if required.  
 406 Letters of guardianship must then be issued in the manner  
 407 provided in s. 744.345.

408 (5) After the assumption of duties by a standby guardian,  
 409 the court shall have jurisdiction over the guardian and the  
 410 ward.

411 Section 7. Section 744.3115, Florida Statutes, is amended  
 412 to read:

413 744.3115 Advance directives for health care.--In each  
 414 proceeding in which a guardian is appointed under this chapter,  
 415 the court shall determine whether the ward, prior to incapacity,  
 416 has executed any valid advance directive under ~~pursuant to~~  
 417 chapter 765. If any ~~such~~ advance directive exists, the court  
 418 shall specify in its order and letters of guardianship what  
 419 authority, if any, the guardian shall exercise over the  
 420 surrogate. Pursuant to the grounds listed in s. 765.105, the

421 court, upon its own motion, may, with notice to the surrogate  
 422 and any other appropriate parties, modify or revoke the  
 423 authority of the surrogate to make health care decisions for the  
 424 ward. For purposes of this section, the term "health care  
 425 decision" has the same meaning as in s. 765.101.

426 Section 8. Section 744.3135, Florida Statutes, is amended  
 427 to read:

428 744.3135 Credit and criminal investigation.--

429 (1) The court may require a nonprofessional guardian and  
 430 shall require a professional or public guardian, and all  
 431 employees of a professional guardian who have a fiduciary  
 432 responsibility to a ward, to submit, at their own expense, to an  
 433 investigation of the guardian's credit history and to undergo  
 434 level 2 background screening as required under s. 435.04. If a  
 435 credit or criminal investigation is required, the court must  
 436 consider the results of any investigation before appointing a  
 437 guardian. At any time, the court may require a guardian or the  
 438 guardian's employees to submit to an investigation of the  
 439 person's credit history and complete a level 1 background  
 440 screening as set forth in s. 435.03. The court shall consider  
 441 the results of any investigation when reappointing a guardian.  
 442 The clerk of the court shall maintain a file on each guardian  
 443 appointed by the court and retain in the file documentation of  
 444 the result of any investigation conducted under this section. A  
 445 professional guardian must pay the clerk of the court a fee of  
 446 up to \$7.50 for handling and processing professional guardian  
 447 files.

448 (2) The court and the Statewide Public Guardianship Office

449 shall accept the satisfactory completion of a criminal  
 450 background investigation by any method described in this  
 451 subsection. A guardian satisfies the requirements of this  
 452 section by undergoing:

453 (a) An inkless electronic fingerprint criminal background  
 454 investigation. A guardian may use any inkless electronic  
 455 fingerprinting equipment used for criminal background  
 456 investigations of public employees. The guardian shall pay the  
 457 actual costs incurred by the Federal Bureau of Investigation or  
 458 the Department of Law Enforcement for the criminal background  
 459 investigation. The agency that operates the equipment used by  
 460 the guardian may charge the guardian an additional fee, not to  
 461 exceed \$10, for the use of the equipment. The agency completing  
 462 the investigation must immediately send the results of the  
 463 criminal background investigation to the clerk of the court and  
 464 the Statewide Public Guardianship Office. The clerk of the court  
 465 shall maintain the results in the guardian's file and shall make  
 466 the results available to the court; or

467 (b) A criminal background investigation using a  
 468 fingerprint card. The clerk of the court shall obtain  
 469 fingerprint cards from the Federal Bureau of Investigation and  
 470 make them available to guardians. Any guardian who is so  
 471 required shall have his or her fingerprints taken and forward  
 472 the proper fingerprint card along with the necessary fee to the  
 473 Florida Department of Law Enforcement for processing. The  
 474 ~~professional guardian shall pay to the clerk of the court a fee~~  
 475 ~~of up to \$7.50 for handling and processing professional guardian~~  
 476 ~~files.~~ The results of the fingerprint card background

477 investigations ~~checks~~ shall be forwarded to the clerk of the  
478 court who shall maintain the results in the guardian's a  
479 ~~guardian~~ file and ~~shall~~ make the results available to the court  
480 and the Statewide Public Guardianship Office. A professional  
481 guardian and each employee of a professional guardian who has a  
482 fiduciary responsibility to a ward must complete, at his or her  
483 own expense, a level 1 background screening as set forth in s.  
484 435.03 before and at least once every 2 years after the date the  
485 guardian is appointed. However, a person is not required to  
486 undergo a criminal background investigation if he or she has  
487 been screened using inkless electronic fingerprinting equipment  
488 that is capable of notifying the clerk of the court and the  
489 Statewide Public Guardianship Office of any crime charged  
490 against the person.

491 (3)(a) A professional guardian and each employee of a  
492 professional guardian who has a fiduciary responsibility to a  
493 ward must complete, at the person's own expense, an  
494 investigation of the credit history of the person before and at  
495 least once every 2 years after the date of the guardian's  
496 appointment.

497 (b) The Statewide Public Guardianship Office shall adopt a  
498 rule detailing the acceptable methods for completing a credit  
499 investigation under this section. If appropriate, the Statewide  
500 Public Guardianship Office may administer credit investigations.  
501 If the office chooses to administer the credit investigation,  
502 the office may adopt a rule setting a fee, not to exceed \$25, to  
503 reimburse the costs associated with the administration of a  
504 credit investigation.

505           (4) The Statewide Public Guardianship Office may inspect  
 506 at any time the results of any credit or criminal investigation  
 507 of a public or professional guardian conducted under this  
 508 section. The office shall maintain copies of the credit or  
 509 criminal results in the guardian's registration file. If the  
 510 results of a credit or criminal investigation of a public or  
 511 professional guardian have not been forwarded to the Statewide  
 512 Public Guardianship Office by the investigating agency, the  
 513 clerk of the court shall forward copies of the results of the  
 514 investigations to the office upon receiving them. ~~If credit or~~  
 515 ~~criminal investigations are required, the court must consider~~  
 516 ~~the results of the investigations before appointing a guardian.~~  
 517 ~~Professional guardians and all employees of a professional~~  
 518 ~~guardian who have a fiduciary responsibility to a ward, so~~  
 519 ~~appointed, must resubmit, at their own expense, to an~~  
 520 ~~investigation of credit history, and undergo level 1 background~~  
 521 ~~screening as required under s. 435.03, at least every 2 years~~  
 522 ~~after the date of their appointment. At any time, the court may~~  
 523 ~~require guardians or their employees to submit to an~~  
 524 ~~investigation of credit history and undergo level 1 background~~  
 525 ~~screening as required under s. 435.03. The court must consider~~  
 526 ~~the results of these investigations in reappointing a guardian.~~  
 527           ~~(1) Upon receiving the results of a credit or criminal~~  
 528 ~~investigation of any public or professional guardian, the clerk~~  
 529 ~~of the court shall forward copies of the results to the~~  
 530 ~~Statewide Public Guardianship Office in order that the results~~  
 531 ~~may be maintained in the guardian's registration file.~~  
 532           (5)(2) The requirements of this section do ~~does~~ not apply

533 to a professional guardian, or to the employees of a  
 534 professional guardian, that ~~which~~ is a trust company, a state  
 535 banking corporation or state savings association authorized and  
 536 qualified to exercise fiduciary powers in this state, or a  
 537 national banking association or federal savings and loan  
 538 association authorized and qualified to exercise fiduciary  
 539 powers in this state.

540 Section 9. Subsection (4) of section 744.3145, Florida  
 541 Statutes, is amended to read:

542 744.3145 Guardian education requirements.--

543 (4) Each person appointed by the court to be a guardian  
 544 must complete the required number of hours of instruction and  
 545 education within 4 months ~~1 year~~ after his or her appointment as  
 546 guardian. The instruction and education must be completed  
 547 through a course approved by the chief judge of the circuit  
 548 court and taught by a court-approved organization. Court-  
 549 approved organizations may include, but are not limited to,  
 550 community or junior colleges, guardianship organizations, and  
 551 the local bar association or The Florida Bar.

552 Section 10. Paragraph (i) of subsection (1) and subsection  
 553 (2) of section 744.3215, Florida Statutes, are amended to read:

554 744.3215 Rights of persons determined incapacitated.--

555 (1) A person who has been determined to be incapacitated  
 556 retains the right:

557 (i) To receive necessary services and rehabilitation  
 558 necessary to maximize the quality of life.

559 (2) Rights that may be removed from a person by an order  
 560 determining incapacity but not delegated to a guardian include

561 the right:

562 (a) To marry. If the right to enter into a contract has  
 563 been removed, the right to marry is subject to court approval.

564 (b) To vote.

565 (c) To personally apply for government benefits.

566 (d) To have a driver's license.

567 (e) To travel.

568 (f) To seek or retain employment.

569 Section 11. Subsections (2), (3), and (7) of section  
 570 744.331, Florida Statutes, are amended to read:

571 744.331 Procedures to determine incapacity.--

572 (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--

573 (a) When a court appoints an attorney for an alleged  
 574 incapacitated person, the court must appoint an attorney who is  
 575 included in the attorney registry compiled by the circuit's  
 576 Article V indigent services committee. Appointments must be made  
 577 on a rotating basis, taking into consideration conflicts arising  
 578 under this chapter.

579 (b)(a) The court shall appoint an attorney for each person  
 580 alleged to be incapacitated in all cases involving a petition  
 581 for adjudication of incapacity. The alleged incapacitated  
 582 person may substitute her or his own attorney for the attorney  
 583 appointed by the court, subject to court approval.

584 (c)(b) Any attorney representing an alleged incapacitated  
 585 person may not serve as guardian of the alleged incapacitated  
 586 person or as counsel for the guardian of the alleged  
 587 incapacitated person or the petitioner.

588 (d) Effective January 1, 2006, an attorney seeking to be

589 appointed by a court for incapacity and guardianship proceedings  
 590 must have completed a minimum of 8 hours of education in  
 591 guardianship. A court may waive the initial training requirement  
 592 for an attorney who has served as a court-appointed attorney in  
 593 incapacity proceedings or as an attorney of record for guardians  
 594 for not less than 3 years.

595 (3) EXAMINING COMMITTEE.--

596 (a) Within 5 days after a petition for determination of  
 597 incapacity has been filed, the court shall appoint an examining  
 598 committee consisting of three members. One member must be a  
 599 psychiatrist or other physician. The remaining members must be  
 600 either a psychologist, gerontologist, another psychiatrist, or  
 601 other physician, a registered nurse, nurse practitioner,  
 602 licensed social worker, a person with an advanced degree in  
 603 gerontology from an accredited institution of higher education,  
 604 or other person who by knowledge, skill, experience, training,  
 605 or education may, in the court's discretion, advise the court in  
 606 the form of an expert opinion, including a professional  
 607 guardian. One of three members of the committee must have  
 608 knowledge of the type of incapacity alleged in the petition.  
 609 Unless good cause is shown, the attending or family physician  
 610 may not be appointed to the committee. If the attending or  
 611 family physician is available for consultation, the committee  
 612 must consult with the physician. Members of the examining  
 613 committee may not be related to or associated with one another,  
 614 ~~or~~ with the petitioner, with counsel for the petitioner or the  
 615 proposed guardian, or with the person alleged to be totally or  
 616 partially incapacitated. A member may not be employed by any

617 private or governmental agency that has custody of, or  
618 furnishes, services or subsidies, directly or indirectly, to the  
619 person or the family of the person alleged to be incapacitated  
620 or for whom a guardianship is sought. A petitioner may not  
621 serve as a member of the examining committee. Members of the  
622 examining committee must be able to communicate, either directly  
623 or through an interpreter, in the language that the alleged  
624 incapacitated person speaks or to communicate in a medium  
625 understandable to the alleged incapacitated person if she or he  
626 is able to communicate. The clerk of the court shall send notice  
627 of the appointment to each person appointed no later than 3 days  
628 after the court's appointment.

629 (b) A person who has been appointed to serve as a member  
630 of an examining committee to examine an alleged incapacitated  
631 person may not thereafter be appointed as a guardian for the  
632 person who was the subject of the examination.

633 (c) Each person appointed to an examining committee must  
634 file an affidavit with the court stating that he or she has  
635 completed the required courses or will do so no later than 4  
636 months after his or her initial appointment. Each year, the  
637 chief judge of the circuit must prepare a list of persons  
638 qualified to be members of the examining committee.

639 (d) A member of an examining committee must complete a  
640 minimum of 4 hours of initial training. The person must complete  
641 2 hours of continuing education during each 2-year period after  
642 the initial training. The initial training and continuing  
643 education program must be developed under the supervision of the  
644 Statewide Public Guardianship Office; in consultation with the

645 Florida Conference of Circuit Court Judges; the Elder Law and  
 646 the Real Property, Probate and Trust Law sections of The Florida  
 647 Bar; the Florida State Guardianship Association; and the Florida  
 648 Guardianship Foundation. The court may waive the initial  
 649 training requirement for a person who has served for not less  
 650 than 5 years on examining committees. If a person wishes to  
 651 obtain his or her continuing education on the Internet or by  
 652 watching a video course, the person must first obtain the  
 653 approval of the chief judge before taking an Internet or video  
 654 course.

655 (e)~~(b)~~ Each member of the examining committee shall  
 656 examine the person. Each ~~The~~ examining committee member must  
 657 ~~shall~~ determine the alleged incapacitated person's ability to  
 658 exercise those rights specified in s. 744.3215. In addition to  
 659 the examination, each ~~the~~ examining committee member must ~~shall~~  
 660 have access to, and may consider, previous examinations of the  
 661 person, including, but not limited to, habilitation plans,  
 662 school records, and psychological and psychosocial reports  
 663 voluntarily offered for use by the alleged incapacitated person.  
 664 Each member of the examining committee must ~~shall~~ submit a  
 665 report within 15 days after appointment.

666 (f)~~(e)~~ The examination of the alleged incapacitated person  
 667 must include a comprehensive examination, a report of which  
 668 shall be filed by the examining committee as part of its written  
 669 report. The comprehensive examination report should be an  
 670 essential element, but not necessarily the only element, used in  
 671 making a capacity and guardianship decision. The comprehensive  
 672 examination must include, if indicated:

- 673 1. A physical examination;
- 674 2. A mental health examination; and
- 675 3. A functional assessment.

676

677 If any of these three aspects of the examination is not

678 indicated or cannot be accomplished for any reason, the written

679 report must explain the reasons for its omission.

680 (g)~~(d)~~ The committee's written report must include:

681 1. To the extent possible, a diagnosis, prognosis, and

682 recommended course of treatment.

683 2. An evaluation of the alleged incapacitated person's

684 ability to retain her or his rights, including, without

685 limitation, the rights to marry; vote; contract; manage or

686 dispose of property; have a driver's license; determine her or

687 his residence; consent to medical treatment; and make decisions

688 affecting her or his social environment.

689 3. The results of the comprehensive examination and the

690 committee members' assessment of information provided by the

691 attending or family physician, if any.

692 4. A description of any matters with respect to which the

693 person lacks the capacity to exercise rights, the extent of that

694 incapacity, and the factual basis for the determination that the

695 person lacks that capacity.

696 5. The names of all persons present during the time the

697 committee member conducted his or her examination. If a person

698 other than the person who is the subject of the examination

699 supplies answers posed to the alleged incapacitated person, the

700 report must include the response and the name of the person

701 supplying the answer.

702 ~~6.5-~~ The signature of each member of the committee and the  
 703 date and time each member conducted his or her examination.

704 ~~(h)(e)~~ A copy of the report must be served on the  
 705 petitioner and on the attorney for the alleged incapacitated  
 706 person within 3 days after the report is filed and at least 5  
 707 days before the hearing on the petition.

708 (7) FEES.--

709 (a) The examining committee and any attorney appointed  
 710 under subsection (2) are entitled to reasonable fees to be  
 711 determined by the court.

712 (b) The fees awarded under paragraph (a) shall be paid by  
 713 the guardian from the property of the ward or, if the ward is  
 714 indigent, by the state. The state shall have a creditor's claim  
 715 against the guardianship property for any amounts paid under  
 716 this section. The state may file its claim within 90 days after  
 717 the entry of an order awarding attorney ad litem fees. If the  
 718 state does not file its claim within the 90-day period, the  
 719 state is thereafter barred from asserting the claim. Upon  
 720 petition by the state for payment of the claim, the court shall  
 721 enter an order authorizing immediate payment out of the property  
 722 of the ward. The state shall keep a record of the ~~such~~ payments.

723 (c) If the petition is dismissed, costs and attorney's  
 724 fees of the proceeding may be assessed against the petitioner if  
 725 the court finds the petition to have been filed in bad faith.

726 Section 12. Present subsection (4) of section 744.341,  
 727 Florida Statutes, is redesignated as subsection (5) and amended,  
 728 and a new subsection (4) is added to said section, to read:

729 744.341 Voluntary guardianship.--

730 (4) A guardian must include in the annual report filed  
 731 with the court a certificate from a licensed physician who  
 732 examined the ward not more than 90 days before the annual report  
 733 is filed with the court. The certificate must certify that the  
 734 ward is competent to understand the nature of the guardianship  
 735 and of the ward's authority to delegate powers to the voluntary  
 736 guardian.

737 (5)(4) A voluntary guardianship may be terminated by the  
 738 ward by filing a notice with the court that the voluntary  
 739 guardianship is terminated. The notice must be accompanied by a  
 740 certificate from a licensed physician who has examined the ward  
 741 not more than 30 days before the ward filed the notice with the  
 742 court. The physician must certify that the ward is competent to  
 743 understand the implications of terminating the guardianship. A  
 744 copy of the notice and certificate must be served on all  
 745 interested persons.

746 Section 13. Subsection (9) is added to section 774.361,  
 747 Florida Statutes, to read:

748 744.361 Powers and duties of guardian.--

749 (9) A professional guardian must ensure that each of the  
 750 guardian's wards is personally visited by the guardian or one of  
 751 the guardian's professional staff at least once each calendar  
 752 quarter. During the personal visit, the guardian or the  
 753 guardian's professional staff person shall assess:

754 (a) The ward's physical appearance and condition.

755 (b) The appropriateness of the ward's current living  
 756 situation.

757           (c) The need for any additional services and the necessity  
 758 for continuation of existing services, taking into consideration  
 759 all aspects of social, psychological, educational, direct  
 760 service, health, and personal care needs.

761  
 762 This subsection does not apply to a professional guardian who  
 763 has been appointed only as guardian of the property.

764           Section 14. Subsection (2) of section 744.365, Florida  
 765 Statutes, is amended to read:

766           744.365 Verified inventory.--

767           (2) CONTENTS.--The verified inventory must include the  
 768 following:

769           (a) All property of the ward, real and personal, that has  
 770 come into the guardian's possession or knowledge, including a  
 771 statement of all encumbrances, liens, and other secured claims  
 772 on any item, any claims against the property, ~~and~~ any cause of  
 773 action accruing to the ward, and any trusts of which the ward is  
 774 a beneficiary;

775           (b) The location of the real and personal property in  
 776 sufficient detail so that it may be clearly identified or  
 777 located; and

778           (c) A description of all sources of income, including,  
 779 without limitation, social security benefits and pensions.

780           Section 15. Subsections (1) and (3) of section 744.367,  
 781 Florida Statutes, are amended to read:

782           744.367 Duty to file annual guardianship report.--

783           (1) Unless the court requires filing on a calendar-year  
 784 basis, each guardian of the person shall file with the court an

785 annual guardianship plan within 90 days after the last day of  
 786 the anniversary month the letters of guardianship were signed,  
 787 and the plan must cover the coming fiscal year, ending on the  
 788 last day in such anniversary month. If the court requires  
 789 calendar-year filing, the guardianship plan must be filed on or  
 790 before April 1 of each year ~~within 90 days after the end of the~~  
 791 ~~calendar year.~~

792 (3) The annual guardianship report of a guardian of the  
 793 property must consist of an annual accounting, and the annual  
 794 report of a guardian of the person ~~of an incapacitated person~~  
 795 must consist of an annual guardianship plan. The annual report  
 796 shall be served on the ward, unless the ward is a minor ~~under~~  
 797 ~~the age of 14 years~~ or is totally incapacitated, and on the  
 798 attorney for the ward, if any. The guardian shall provide a copy  
 799 to any other person as the court may direct.

800 Section 16. Section 744.3675, Florida Statutes, is amended  
 801 to read:

802 744.3675 Annual guardianship plan.--Each guardian of the  
 803 person must file with the court an annual guardianship plan  
 804 which updates information about the condition of the ward. The  
 805 annual plan must specify the current needs of the ward and how  
 806 those needs are proposed to be met in the coming year.

807 (1) Each plan for an adult ward must, if applicable,  
 808 include:

809 (a) Information concerning the residence of the ward,  
 810 including:

- 811 1. The ward's address at the time of filing the plan;
- 812 2. The name and address of each place where the ward was

813 maintained during the preceding year;

814       3. The length of stay of the ward at each place;

815       4. A statement of whether the current residential setting

816 is best suited for the current needs of the ward; and

817       5. Plans for ensuring during the coming year that the ward

818 is in the best residential setting to meet his or her needs.

819       (b) Information concerning the medical and mental health

820 conditions ~~condition~~ and treatment and rehabilitation needs of

821 the ward, including:

822       1. A resume of any professional medical treatment given to

823 the ward during the preceding year;

824       2. The report of a physician who examined the ward no more

825 than 90 days before the beginning of the applicable reporting

826 period. The ~~Such~~ report must contain an evaluation of the ward's

827 condition and a statement of the current level of capacity of

828 the ward; and

829       3. The plan for providing ~~provision~~ of medical, mental

830 health, and rehabilitative services in the coming year.

831       (c) Information concerning the social condition of the

832 ward, including:

833       1. The social and personal services currently used

834 ~~utilized~~ by the ward. ~~;~~

835       2. The social skills of the ward, including a statement of

836 how well the ward communicates and maintains interpersonal

837 relationships. ~~with others;~~

838       ~~3. A description of the ward's activities at communication~~

839 ~~and visitation; and~~

840       3.4. The social needs of the ward.

841           (2) Each plan filed by the legal guardian of a minor must  
 842 include:

843           (a) Information concerning the residence of the minor,  
 844 including:

845           1. The minor's address at the time of filing the plan.

846           2. The name and address of each place where the minor  
 847 lived during the preceding year.

848           (b) Information concerning the medical and mental health  
 849 conditions and treatment and rehabilitation needs of the minor,  
 850 including:

851           1. A resume of any professional medical treatment given to  
 852 the minor during the preceding year.

853           2. A report from the physician who examined the minor no  
 854 more than 180 days before the beginning of the applicable  
 855 reporting period that contains an evaluation of the minor's  
 856 physical and mental conditions.

857           3. The plan for providing medical services in the coming  
 858 year.

859           (c) Information concerning the education of the minor,  
 860 including:

861           1. A summary of the school progress report.

862           2. The social development of the minor, including a  
 863 statement of how well the minor communicates and maintains  
 864 interpersonal relationships.

865           3. The social needs of the minor.

866           ~~(3)~~(2) Each plan for an adult ward must address the issue  
 867 of restoration of rights to the ward and include:

868           (a) A summary of activities during the preceding year

869 which were designed to enhance ~~increase~~ the capacity of the  
 870 ward;

871 (b) A statement of whether the ward can have any rights  
 872 restored; and

873 (c) A statement of whether restoration of any rights will  
 874 be sought.

875 ~~(4)~~~~(3)~~ The court, in its discretion, may require  
 876 reexamination of the ward by a physician at any time.

877 Section 17. Subsections (2) and (3) of section 744.3678,  
 878 Florida Statutes, are amended to read:

879 744.3678 Annual accounting.--

880 (2) The annual accounting must include:

881 (a) A full and correct account of the receipts and  
 882 disbursements of all of the ward's property over which the  
 883 guardian has control and a statement of the ward's property on  
 884 hand at the end of the accounting period. This paragraph does  
 885 not apply to any property under the control of the guardian,  
 886 including any trust of which the ward is a beneficiary but which  
 887 is not under the control or administration of the guardian.

888 (b) A copy of the annual or year-end statement of all of  
 889 the ward's cash accounts from each of the institutions where the  
 890 cash is deposited.

891 (3) The guardian must obtain a receipt, ~~or canceled check,~~  
 892 or other proof of payment for all expenditures and disbursements  
 893 made on behalf of the ward. The guardian must preserve all  
 894 evidence of payment ~~the receipts and canceled checks,~~ along with  
 895 other substantiating papers, for a period of 3 years after his  
 896 or her discharge. The receipts, proofs of payment ~~checks,~~ and

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897 substantiating papers need not be filed with the court but shall  
898 be made available for inspection and review at the ~~such~~ time and  
899 ~~in such~~ place and before such persons as the court may ~~from time~~  
900 ~~to time~~ order.

901 Section 18. Section 744.3679, Florida Statutes, is amended  
902 to read:

903 744.3679 Simplified accounting procedures in certain  
904 cases.--

905 (1) In a guardianship of property, when all assets of the  
906 estate are in designated depositories under s. 69.031 and the  
907 only transactions that occur in that account are interest  
908 accrual, deposits from a ~~pursuant to~~ settlement, or financial  
909 institution service charges, the guardian may elect to file an  
910 accounting consisting of:

911 (a) The original or a certified copy of the year-end  
912 statement of the ward's account from the financial institution;  
913 and

914 (b) A statement by the guardian under penalty of perjury  
915 that the guardian has custody and control of the ward's property  
916 as shown in the year-end statement.

917 ~~(2) The clerk has no responsibility to monitor or audit~~  
918 ~~the accounts and may not accept a fee for doing so.~~

919 (2)(3) The accounting allowed by subsection (1) is in lieu  
920 of the accounting and auditing procedures under s. 744.3678(2)  
921 ~~ss. 744.3678 and 744.368(1)(f)~~. However, any interested party  
922 may seek judicial review as provided in s. 744.3685.

923 (3)(4) The guardian need not be represented by an attorney  
924 in order to file the annual accounting allowed by subsection

925 (1).

926 Section 19. Subsection (3) of section 744.368, Florida  
 927 Statutes, is amended to read:

928 744.368 Responsibilities of the clerk of the circuit  
 929 court.--

930 (3) Within 90 days after the filing of the verified  
 931 inventory and accountings ~~initial or annual guardianship report~~  
 932 by a guardian of the property, the clerk shall audit the  
 933 verified inventory and ~~or~~ the accountings ~~annual accounting~~. The  
 934 clerk shall advise the court of the results of the audit.

935 Section 20. Subsection (19) of section 744.441, Florida  
 936 Statutes, is amended to read:

937 744.441 Powers of guardian upon court approval.--After  
 938 obtaining approval of the court pursuant to a petition for  
 939 authorization to act, a plenary guardian of the property, or a  
 940 limited guardian of the property within the powers granted by  
 941 the order appointing the guardian or an approved annual or  
 942 amended guardianship report, may:

943 (19) Create or amend revocable or irrevocable trusts of  
 944 property of the ward's estate which may extend beyond the  
 945 disability or life of the ward in connection with estate, gift,  
 946 income, or other tax planning or in connection with estate  
 947 planning. The court shall retain oversight of the assets  
 948 transferred to a trust, unless otherwise ordered by the court.

949 Section 21. Section 744.442, Florida Statutes, is created  
 950 to read:

951 744.442 Delegation of authority.--

952 (1) A guardian may designate a surrogate guardian to

953 exercise the powers of the guardian if the guardian is  
 954 unavailable to act. A person designated as a surrogate guardian  
 955 under this section must be a professional guardian.

956 (2)(a) A guardian must file a petition with the court  
 957 requesting permission to designate a surrogate guardian.

958 (b) If the court approves the designation, the order must  
 959 specify the name and business address of the surrogate guardian  
 960 and the duration of appointment, which may not exceed 30 days.  
 961 The court may extend the appointment for good cause shown. The  
 962 surrogate guardian may exercise all powers of the guardian  
 963 unless limited by order of the court. The surrogate guardian  
 964 must file with the court an oath swearing or affirming that he  
 965 or she will faithfully perform the duties delegated. The court  
 966 may require the surrogate guardian to post a bond.

967 (3) This section does not limit the responsibility of the  
 968 guardian to the ward and to the court. The guardian is liable  
 969 for the acts of the surrogate guardian. The guardian may  
 970 terminate the authority of the surrogate guardian by filing a  
 971 written notice of the termination with the court.

972 (4) The surrogate guardian is subject to the jurisdiction  
 973 of the court as if appointed to serve as guardian.

974 Section 22. Paragraphs (c), (e), and (f) of subsection (2)  
 975 and subsection (4) of section 744.464, Florida Statutes, are  
 976 amended to read:

977 744.464 Restoration to capacity.--

978 (2) SUGGESTION OF CAPACITY.--

979 (c) The court shall immediately send notice of the filing  
 980 of the suggestion of capacity to the ward, the guardian, the

981 attorney for the ward, if any, ~~the state attorney,~~ and any other  
 982 interested persons designated by the court. Formal notice must  
 983 be served on the guardian. Informal notice may be served on  
 984 other persons. Notice need not be served on the person who filed  
 985 the suggestion of capacity.

986 (e) If an objection is timely filed, or if the medical  
 987 examination suggests that full restoration is not appropriate,  
 988 the court shall set the matter for hearing. If the ward does  
 989 not have an attorney, the court shall appoint one to represent  
 990 the ward.

991 (f) Notice of the hearing and copies of the objections and  
 992 medical examination reports shall be served upon the ward, the  
 993 ward's attorney, the guardian, ~~the state attorney,~~ the ward's  
 994 next of kin, and any other interested persons as directed by the  
 995 court.

996 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~  
 997 ~~CAPACITY. Notwithstanding this section, a suggestion of~~  
 998 ~~capacity may not be filed within 90 days after an adjudication~~  
 999 ~~of incapacity or denial of restoration, unless good cause is~~  
 1000 ~~shown.~~

1001 Section 23. Section 744.511, Florida Statutes, is amended  
 1002 to read:

1003 744.511 Accounting upon removal.--A removed guardian shall  
 1004 file with the court a true, complete, and final report of his or  
 1005 her guardianship within 20 days after removal and shall serve a  
 1006 copy on the successor guardian and the ward, unless the ward is  
 1007 a minor ~~under 14 years of age~~ or has been determined to be  
 1008 totally incapacitated.

1009 Section 24. Section 744.527, Florida Statutes, is amended  
 1010 to read:

1011 744.527 Final reports and application for discharge;  
 1012 hearing.--

1013 (1) When the court terminates the guardianship for any of  
 1014 the reasons set forth in s. 744.521, the guardian shall promptly  
 1015 file his or her final report. If the ward has died, the guardian  
 1016 must file a final report with the court no later than 45 days  
 1017 after he or she has been served with letters of administration  
 1018 or letters of curatorship. If no objections are filed and if it  
 1019 appears that the guardian has made full and complete  
 1020 distribution to the person entitled and has otherwise faithfully  
 1021 discharged his or her duties, the court shall approve the final  
 1022 report. If objections are filed, the court shall conduct a  
 1023 hearing in the same manner as provided for a hearing on  
 1024 objections to annual guardianship reports.

1025 (2) The guardian applying for discharge may ~~is authorized~~  
 1026 ~~to~~ retain from the funds in his or her possession a sufficient  
 1027 amount to pay the final costs of administration, including  
 1028 guardian and attorney's fees regardless of the death of the  
 1029 ward, accruing between the filing of his or her final returns  
 1030 and the order of discharge.

1031 Section 25. Subsection (3) of section 744.528, Florida  
 1032 Statutes, is amended to read:

1033 744.528 Discharge of guardian named as personal  
 1034 representative.--

1035 (3) Any interested person may file a notice of ~~The court~~  
 1036 ~~shall set~~ a hearing on any objections filed by the

1037 beneficiaries. Notice of the hearing must ~~shall~~ be served upon  
 1038 the guardian, beneficiaries of the ward's estate, and any other  
 1039 person to whom the court directs service. If a notice of hearing  
 1040 on the objections is not served within 90 days after filing of  
 1041 the objections, the objections are deemed abandoned.

1042 Section 26. Subsection (6) of section 744.708, Florida  
 1043 Statutes, is amended to read:

1044 744.708 Reports and standards.--

1045 (6) A ~~The~~ public guardian shall ensure that each of the  
 1046 guardian's wards is personally visited ~~ward is seen~~ by the  
 1047 public guardian or by a professional staff person of the public  
 1048 guardian at least once each calendar quarter ~~four times a year~~.  
 1049 During this personal visit, the public guardian or the  
 1050 professional staff person shall assess:

1051 (a) The ward's physical appearance and condition.

1052 (b) The appropriateness of the ward's current living  
 1053 situation.

1054 (c) The need for any additional services and the necessity  
 1055 for continuation of existing services, taking into consideration  
 1056 all aspects of social, psychological, educational, direct  
 1057 service, health, and personal care needs.

1058 Section 27. Paragraph (a) of subsection (5) of section  
 1059 765.101, Florida Statutes, is amended to read:

1060 765.101 Definitions.--As used in this chapter:

1061 (5) "Health care decision" means:

1062 (a) Informed consent, refusal of consent, or withdrawal of  
 1063 consent to any and all health care, including life-prolonging  
 1064 procedures and mental health treatment, unless otherwise stated

1065 in the advance directives.

1066 Section 28. Section 28.345, Florida Statutes, is amended  
 1067 to read:

1068 28.345 Exemption from court-related fees and  
 1069 charges.--Notwithstanding any other ~~provision of this chapter or~~  
 1070 law to the contrary, judges, state attorneys, guardians ad  
 1071 litem, public guardians, and public defenders, acting in their  
 1072 official capacity, and state agencies, are exempt from all  
 1073 court-related fees and charges assessed by the clerks of the  
 1074 circuit courts.

1075 Section 29. Paragraph (c) of subsection (8) of section  
 1076 121.091, Florida Statutes, is amended to read:

1077 121.091 Benefits payable under the system.--Benefits may  
 1078 not be paid under this section unless the member has terminated  
 1079 employment as provided in s. 121.021(39)(a) or begun  
 1080 participation in the Deferred Retirement Option Program as  
 1081 provided in subsection (13), and a proper application has been  
 1082 filed in the manner prescribed by the department. The department  
 1083 may cancel an application for retirement benefits when the  
 1084 member or beneficiary fails to timely provide the information  
 1085 and documents required by this chapter and the department's  
 1086 rules. The department shall adopt rules establishing procedures  
 1087 for application for retirement benefits and for the cancellation  
 1088 of such application when the required information or documents  
 1089 are not received.

1090 (8) DESIGNATION OF BENEFICIARIES.--

1091 (c) Notwithstanding the member's designation of benefits  
 1092 to be paid through a trust to a beneficiary that is a natural

1093 person as provided in s. 121.021(46), and notwithstanding the  
 1094 provisions of the trust, benefits shall be paid directly to the  
 1095 beneficiary if the ~~such~~ person is no longer a minor or an  
 1096 incapacitated person as defined in s. 744.102(12)~~(11)~~ and  
 1097 (13)~~(12)~~.

1098 Section 30. Subsection (1) and paragraphs (b), (d), and  
 1099 (f) of subsection (4) of section 709.08, Florida Statutes, are  
 1100 amended to read:

1101 709.08 Durable power of attorney.--

1102 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable  
 1103 power of attorney is a written power of attorney by which a  
 1104 principal designates another as the principal's attorney in  
 1105 fact. The durable power of attorney must be in writing, must be  
 1106 executed with the same formalities required for the conveyance  
 1107 of real property by Florida law, and must contain the words:  
 1108 "This durable power of attorney is not affected by subsequent  
 1109 incapacity of the principal except as provided in s. 709.08,  
 1110 Florida Statutes"; or similar words that show the principal's  
 1111 intent that the authority conferred is exercisable  
 1112 notwithstanding the principal's subsequent incapacity, except as  
 1113 otherwise provided by this section. The durable power of  
 1114 attorney is exercisable as of the date of execution; however, if  
 1115 the durable power of attorney is conditioned upon the  
 1116 principal's lack of capacity to manage property as defined in s.  
 1117 744.102(12)~~(11)~~(a), the durable power of attorney is exercisable  
 1118 upon the delivery of affidavits in paragraphs (4)(c) and (d) to  
 1119 the third party.

1120 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;

1121 AFFIDAVITS.--

1122 (b) Any third party may rely upon the authority granted in  
 1123 a durable power of attorney that is conditioned on the  
 1124 principal's lack of capacity to manage property as defined in s.  
 1125 744.102(12)(~~11~~)(a) only after receiving the affidavits provided  
 1126 in paragraphs (c) and (d), and such reliance shall end when the  
 1127 third party has received notice as provided in subsection (5).

1128 (d) A determination that a principal lacks the capacity to  
 1129 manage property as defined in s. 744.102(12)(~~11~~)(a) must be made  
 1130 and evidenced by the affidavit of a physician licensed to  
 1131 practice medicine pursuant to chapters 458 and 459 as of the  
 1132 date of the affidavit. A judicial determination that the  
 1133 principal lacks the capacity to manage property pursuant to  
 1134 chapter 744 is not required prior to the determination by the  
 1135 physician and the execution of the affidavit. For purposes of  
 1136 this section, the physician executing the affidavit must be the  
 1137 primary physician who has responsibility for the treatment and  
 1138 care of the principal. The affidavit executed by a physician  
 1139 must state where the physician is licensed to practice medicine,  
 1140 that the physician is the primary physician who has  
 1141 responsibility for the treatment and care of the principal, and  
 1142 that the physician believes that the principal lacks the  
 1143 capacity to manage property as defined in s. 744.102(12)(~~11~~)(a).  
 1144 The affidavit may, but need not, be in the following form:

1145  
 1146 STATE OF \_\_\_\_\_  
 1147 COUNTY OF \_\_\_\_\_

1148

1149 Before me, the undersigned authority, personally appeared  
 1150 (name of physician) , Affiant, who swore or affirmed that:

1151 1. Affiant is a physician licensed to practice medicine in  
 1152 (name of state, territory, or foreign country) .

1153 2. Affiant is the primary physician who has responsibility  
 1154 for the treatment and care of (principal's name) .

1155 3. To the best of Affiant's knowledge after reasonable  
 1156 inquiry, Affiant believes that the principal lacks the capacity  
 1157 to manage property, including taking those actions necessary to  
 1158 obtain, administer, and dispose of real and personal property,  
 1159 intangible property, business property, benefits, and income.

1160

1161

1162

\_\_\_\_\_  
 (Affiant)

1164

1165 Sworn to (or affirmed) and subscribed before me this (day  
 1166 of) (month) , (year) , by (name of person making  
 1167 statement)

1168

1169 (Signature of Notary Public-State of Florida)

1170

1171 (Print, Type, or Stamp Commissioned Name of Notary Public)

1172

1173 Personally Known OR Produced Identification

1174 (Type of Identification Produced)

1175 (f) A third party may not rely on the authority granted in  
 1176 a durable power of attorney conditioned on the principal's lack

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1177 of capacity to manage property as defined in s.  
 1178 744.102(12)(~~11~~)(a) when any affidavit presented has been  
 1179 executed more than 6 months prior to the first presentation of  
 1180 the durable power of attorney to the third party.

1181 Section 31. Subsection (3) of section 744.1085, Florida  
 1182 Statutes, is amended to read:

1183 744.1085 Regulation of professional guardians;  
 1184 application; bond required; educational requirements.--

1185 (3) Each professional guardian defined in s.  
 1186 744.102(17)(~~16~~) and public guardian must receive a minimum of 40  
 1187 hours of instruction and training. Each professional guardian  
 1188 must receive a minimum of 16 hours of continuing education every  
 1189 2 calendar years after the year in which the initial 40-hour  
 1190 educational requirement is met. The instruction and education  
 1191 must be completed through a course approved or offered by the  
 1192 Statewide Public Guardianship Office. The expenses incurred to  
 1193 satisfy the educational requirements prescribed in this section  
 1194 may not be paid with the assets of any ward. This subsection  
 1195 does not apply to any attorney who is licensed to practice law  
 1196 in this state.

1197 Section 32. For the purpose of incorporating the amendment  
 1198 made by this act to section 744.3215, Florida Statutes, in a  
 1199 reference thereto, subsection (4) of section 117.107, Florida  
 1200 Statutes, is reenacted to read:

1201 117.107 Prohibited acts.--

1202 (4) A notary public may not take the acknowledgment of or  
 1203 administer an oath to a person whom the notary public actually  
 1204 knows to have been adjudicated mentally incapacitated by a court

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1205 of competent jurisdiction, where the acknowledgment or oath  
 1206 necessitates the exercise of a right that has been removed  
 1207 pursuant to s. 744.3215(2) or (3), and where the person has not  
 1208 been restored to capacity as a matter of record.

1209 Section 33. Subsection (13) of section 318.18, Florida  
 1210 Statutes, is amended to read:

1211 318.18 Amount of civil penalties.--The penalties required  
 1212 for a noncriminal disposition pursuant to s. 318.14 are as  
 1213 follows:

1214 (13) In addition to any penalties imposed for noncriminal  
 1215 traffic infractions under ~~pursuant to~~ this chapter or imposed  
 1216 for criminal violations listed in s. 318.17, a board of county  
 1217 commissioners or any unit of local government which is  
 1218 consolidated as provided by s. 9, Art. VIII of the State  
 1219 Constitution of 1885, as preserved by s. 6(e), Art. VIII of the  
 1220 Constitution of 1968:

1221 (a)1. May impose by ordinance a surcharge of up to \$15 for  
 1222 any infraction or violation to fund state court facilities. The  
 1223 court may ~~shall~~ not waive this surcharge.

1224 2. May impose an additional \$15 surcharge to fund the  
 1225 county's participation in the public guardianship program under  
 1226 chapter 744. Imposition of this surcharge must be by vote of  
 1227 two-thirds of the board of county commissioners or after a  
 1228 referendum approved by the electors of the county. Before  
 1229 imposing the surcharge, the county commission must demonstrate  
 1230 that available revenue sources are insufficient to fund such  
 1231 participation. The court may not waive this surcharge.

1232 (b) That imposed increased fees or service charges by

1233 ordinance under s. 28.2401, s. 28.241, or s. 34.041 for the  
 1234 purpose of securing payment of the principal and interest on  
 1235 bonds issued by the county before July 1, 2003, to finance state  
 1236 court facilities, may impose by ordinance a surcharge for any  
 1237 infraction or violation for the exclusive purpose of securing  
 1238 payment of the principal and interest on bonds issued by the  
 1239 county before July 1, 2003, to fund state court facilities until  
 1240 the date of stated maturity. The court may ~~shall~~ not waive this  
 1241 surcharge. The ~~Such~~ surcharge may not exceed an amount per  
 1242 violation calculated as the quotient of the maximum annual  
 1243 payment of the principal and interest on the bonds as of July 1,  
 1244 2003, divided by the number of traffic citations for county  
 1245 fiscal year 2002-2003 certified as paid by the clerk of the  
 1246 court of the county. The ~~Such~~ quotient shall be rounded up to  
 1247 the next highest dollar amount. The bonds may be refunded only  
 1248 if savings will be realized on payments of debt service and the  
 1249 refunding bonds are scheduled to mature on the same date or  
 1250 before the bonds being refunded.

1251  
 1252 A county may not impose ~~both~~ of the surcharges authorized under  
 1253 both paragraphs (a) and (b) concurrently.

1254 Section 34. Section 938.065, Florida Statutes, is created  
 1255 to read:

1256 938.065 Additional cost for public guardianship  
 1257 programs.--

1258 (1) In addition to any fine prescribed by law for any  
 1259 misdemeanor offense, there is assessed as a court cost an  
 1260 additional surcharge of \$18 on each fine, which shall be imposed

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1261 by each county and circuit court and collected by the clerk of  
1262 the court together with the fine.

1263 (2) The clerk of the court shall collect and forward, on a  
1264 monthly basis, all costs assessed under this section, less \$3  
1265 per assessment as a service charge to be retained by the clerk,  
1266 to the Department of Revenue for deposit into the General  
1267 Revenue Fund. The funds collected shall be used exclusively to  
1268 fund public guardianship programs in this state.

1269 Section 35. This act shall take effect July 1, 2005.