

CHAMBER ACTION

1 The Future of Florida's Families Committee recommends the
2 following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to guardianship; amending s. 744.102,
8 F.S.; defining the terms "audit" and "surrogate guardian";
9 amending s. 744.1083, F.S.; providing that the Statewide
10 Public Guardianship Office need not review credit and
11 criminal investigations from a college or university
12 before registering the institution as a professional
13 guardian; amending s. 744.301, F.S.; providing that in the
14 event of death, the surviving parent is the sole natural
15 guardian of a minor; prohibiting a natural guardian from
16 using the property of the ward for the guardian's benefit
17 without a court order; creating s. 744.3025, F.S.;
18 authorizing a court to appoint a guardian ad litem to
19 represent a minor's interest in certain claims that exceed
20 a specified amount; requiring a court to appoint a
21 guardian ad litem to represent a minor's interest in
22 certain claims that exceed a specified amount; providing
23 that a court need not appoint a guardian ad litem under

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24 | certain circumstances; requiring a court to award
25 | reasonable fees and costs to the guardian ad litem;
26 | amending s. 744.3031, F.S.; increasing the time an
27 | emergency temporary guardian may serve to 90 days;
28 | authorizing an extension; requiring an emergency temporary
29 | guardian to file a final report; providing for the
30 | contents of the final report; amending s. 744.304, F.S.;
31 | specifying the persons who may file a petition for a
32 | standby guardian; requiring that notice of the appointment
33 | hearing be served on the ward's next of kin; clarifying
34 | when a standby guardian may assume the duties of guardian;
35 | requiring that each standby guardian submit to credit and
36 | criminal background checks; amending s. 744.3115, F.S.;
37 | providing a definition; amending s. 744.3135, F.S.;
38 | providing procedures for completing a guardians' criminal
39 | background investigation; authorizing a guardian to use
40 | inkless electronic fingerprinting equipment that is
41 | available for background investigations of public
42 | employees; providing that a guardian need not be
43 | rescreened if he or she uses certain inkless electronic
44 | fingerprinting equipment; providing for fees; requiring
45 | the Statewide Public Guardianship Office to adopt a rule
46 | for credit investigations of guardians; amending s.
47 | 744.3145, F.S.; reducing the time in which a guardian must
48 | complete the education courses from 1 year to 4 months;
49 | amending s. 744.3215, F.S.; providing that an
50 | incapacitated person retains the right to receive
51 | necessary services and rehabilitation necessary to

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52 | maximize the quality of the person's life; amending s.
53 | 744.331, F.S.; requiring that the court appoint an
54 | attorney from a specified registry; requiring attorneys to
55 | complete certain training programs; providing that a
56 | member of the examining committee may not be related to or
57 | associated with certain persons; prohibiting a person who
58 | served on an examining committee from being appointed as
59 | the guardian; requiring each member of an examining
60 | committee to file an affidavit stating that he or she has
61 | completed the mandatory training; providing for training
62 | programs; requiring each member to report the time and
63 | date that he or she examined the person alleged to be
64 | incapacitated; providing for an award of attorney's fees;
65 | amending s. 744.341, F.S.; requiring the voluntary
66 | guardian to include certain information in the annual
67 | report; requiring that certain specified information be
68 | included in the notice to terminate a voluntary
69 | guardianship; amending s. 744.361, F.S.; requiring a
70 | professional guardian to ensure that each of his or her
71 | wards is personally visited at least quarterly; providing
72 | for the assessment of certain conditions during the
73 | personal visit; amending s. 744.365, F.S.; requiring that
74 | the verified inventory include information on any trust to
75 | which a ward is a beneficiary; amending s. 744.367, F.S.;
76 | requiring that the annual report of the guardian be filed
77 | on or before a specified date; amending s. 744.3675, F.S.;
78 | requiring that the annual guardianship plan include
79 | information on the mental condition of the ward; providing

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80 | for an annual guardianship plan for wards who are minors;
 81 | amending s. 744.3678, F.S.; providing that property of the
 82 | ward which is not under the control of the guardian,
 83 | including certain trusts, is not subject to annual
 84 | accounting; requiring certain documentation for the annual
 85 | accounting; amending s. 744.3679, F.S.; removing a
 86 | provision prohibiting the clerk of the court from having
 87 | responsibility for monitoring or auditing accounts in
 88 | certain cases; amending s. 744.368, F.S.; requiring that
 89 | the verified inventory and the accountings be audited
 90 | within a specified time period; amending s. 744.441, F.S.;
 91 | requiring the court to retain oversight for assets of a
 92 | ward transferred to a trust; creating s. 744.442, F.S.;
 93 | providing that a guardian may designate a surrogate
 94 | guardian to exercise the powers of the guardian if the
 95 | guardian is unavailable to act; requiring the surrogate
 96 | guardian to be a professional guardian; providing the
 97 | procedures to be used in appointing a surrogate guardian;
 98 | providing the duties of a surrogate guardian; requiring
 99 | the guardian to be liable for the acts of the surrogate
 100 | guardian; authorizing the guardian to terminate the
 101 | services of the surrogate guardian by filing a written
 102 | notice of the termination with the court; amending s.
 103 | 744.464, F.S.; removing the state attorney from the list
 104 | of persons to be served a notice of a hearing on
 105 | restoration of capacity; removing a time limitation on the
 106 | filing of a suggestion of capacity; amending s. 744.474,
 107 | F.S.; revising provisions relating to removal of a

108 guardian who is not a family member; revising provisions
 109 relating to removal of a guardian upon a showing that
 110 removal of the current guardian is in the best interest of
 111 the ward; amending s. 744.511, F.S.; providing that a ward
 112 who is a minor need not be served with the final report of
 113 a removed guardian; amending s. 744.527, F.S.; providing
 114 that final reports for a deceased ward be filed at a
 115 specified time; amending s. 744.528, F.S.; providing for a
 116 notice of the hearing for objections to a report filed by
 117 a guardian; amending s. 744.708, F.S.; requiring a public
 118 guardian to ensure that each of his or her wards is
 119 personally visited at least quarterly; providing for the
 120 assessment of certain conditions during the personal
 121 visit; amending s. 765.101, F.S.; redefining the term
 122 "health care decision" to include informed consent for
 123 mental health treatment services; amending s. 28.345,
 124 F.S.; exempting a public guardian from paying court-
 125 related fees and charges; amending ss. 121.091, 709.08,
 126 and 744.1085, F.S.; conforming cross references;
 127 reenacting s. 117.107(4), F.S., relating to prohibited
 128 acts of a notary public, to incorporate the amendment made
 129 to s. 744.3215, F.S., in a reference thereto; amending s.
 130 318.18, F.S.; authorizing a county to impose a surcharge
 131 on certain civil penalties to fund local participation in
 132 the public guardianship program; prescribing prerequisites
 133 for imposing the surcharge; providing a limit on the
 134 surcharge; creating s. 938.065, F.S.; requiring that a
 135 specified surcharge be assessed against all misdemeanor

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136 offenses; providing that the clerk of the court may retain
 137 a service charge; directing that the funds collected be
 138 used to fund public guardianship programs; providing an
 139 effective date.

140

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

142

143 Section 1. Section 744.102, Florida Statutes, is amended
 144 to read:

145 744.102 Definitions.--As used in this chapter, the term:

146 (1) "Attorney for the alleged incapacitated person" means
 147 an attorney who represents the alleged incapacitated person. The
 148 ~~Such~~ attorney shall represent the expressed wishes of the
 149 alleged incapacitated person to the extent it is consistent with
 150 the rules regulating The Florida Bar.

151 (2) "Audit" means a systematic review of financial
 152 documents with adherence to generally accepted auditing
 153 standards.

154 (3)~~(2)~~ "Clerk" means the clerk or deputy clerk of the
 155 court.

156 (4)~~(3)~~ "Corporate guardian" means a corporation authorized
 157 to exercise fiduciary or guardianship powers in this state and
 158 includes a nonprofit corporate guardian.

159 (5)~~(4)~~ "Court" means the circuit court.

160 (6)~~(5)~~ "Court monitor" means a person appointed by the
 161 court under ~~pursuant to~~ s. 744.107 to provide the court with
 162 information concerning a ward.

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163 (7)~~(6)~~ "Estate" means the property of a ward subject to
164 administration.

165 (8)~~(7)~~ "Foreign guardian" means a guardian appointed in
166 another state or country.

167 (9)~~(8)~~ "Guardian" means a person who has been appointed by
168 the court to act on behalf of a ward's person or property, or
169 both.

170 (a) "Limited guardian" means a guardian who has been
171 appointed by the court to exercise the legal rights and powers
172 specifically designated by court order entered after the court
173 has found that the ward lacks the capacity to do some, but not
174 all, of the tasks necessary to care for his or her person or
175 property, or after the person has voluntarily petitioned for
176 appointment of a limited guardian.

177 (b) "Plenary guardian" means a person who has been
178 appointed by the court to exercise all delegable legal rights
179 and powers of the ward after the court has found that the ward
180 lacks the capacity to perform all of the tasks necessary to care
181 for his or her person or property.

182 (10)~~(9)~~ "Guardian ad litem" means a person who is
183 appointed by the court having jurisdiction of the guardianship
184 or a court in which a particular legal matter is pending to
185 represent a ward in that proceeding.

186 (11)~~(10)~~ "Guardian advocate" means a person appointed by a
187 written order of the court to represent a person with
188 developmental disabilities under s. 393.12. As used in this
189 chapter, the term does not apply to a guardian advocate

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190 appointed for a person determined incompetent to consent to
191 treatment under s. 394.4598.

192 (12)~~(11)~~ "Incapacitated person" means a person who has
193 been judicially determined to lack the capacity to manage at
194 least some of the property or to meet at least some of the
195 essential health and safety requirements of the ~~such~~ person.

196 (a) To "manage property" means to take those actions
197 necessary to obtain, administer, and dispose of real and
198 personal property, intangible property, business property,
199 benefits, and income.

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

205 (13)~~(12)~~ "Minor" means a person under 18 years of age
206 whose disabilities have not been removed by marriage or
207 otherwise.

208 (14)~~(13)~~ "Next of kin" means those persons who would be
209 heirs at law of the ward or alleged incapacitated person if the
210 ~~such~~ person were deceased and includes the lineal descendants of
211 the ~~such~~ ward or alleged incapacitated person.

212 (15)~~(14)~~ "Nonprofit corporate guardian" means a nonprofit
213 corporation organized for religious or charitable purposes and
214 existing under the laws of this state.

215 (16)~~(15)~~ "Preneed guardian" means a person named in a
216 written declaration to serve as guardian in the event of the
217 incapacity of the declarant as provided in s. 744.3045.

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218 (17)~~(16)~~ "Professional guardian" means any guardian who
 219 ~~receives or has at any time received compensation for services~~
 220 rendered services to three or more ~~than two~~ wards as their
 221 guardian. A person serving as a guardian for two or more
 222 relatives as defined in s. 744.309(2) is not considered a
 223 professional guardian. A public guardian shall be considered a
 224 professional guardian for purposes of regulation, education, and
 225 registration.

226 (18)~~(17)~~ "Property" means both real and personal property
 227 or any interest in it and anything that may be the subject of
 228 ownership.

229 (19)~~(18)~~ "Standby guardian" means a person empowered to
 230 assume the duties of guardianship upon the death or adjudication
 231 of incapacity of the last surviving natural or appointed
 232 guardian.

233 (20) "Surrogate guardian" means a guardian designated
 234 according to s. 744.442.

235 (21)~~(19)~~ "Totally incapacitated" means incapable of
 236 exercising any of the rights enumerated in s. 744.3215(2) and
 237 (3).

238 (22)~~(20)~~ "Ward" means a person for whom a guardian has
 239 been appointed.

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

242 744.1083 Professional guardian registration.--

243 (10) A state college or university or an independent
 244 college or university described in s. 1009.98(3)(a), may, but is
 245 not required to, register as a professional guardian under this

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246 section. If a state college or university or independent college
 247 or university elects to register as a professional guardian
 248 under this subsection, the requirements of subsections (3) and
 249 (4) ~~subsection (3)~~ do not apply and the registration must
 250 include only the name, address, and employer identification
 251 number of the registrant.

252 Section 3. Section 744.301, Florida Statutes, is amended
 253 to read:

254 744.301 Natural guardians.--

255 (1) The mother and father jointly are natural guardians of
 256 their own children and of their adopted children, during
 257 minority. If one parent dies, the surviving parent remains the
 258 sole natural guardian even if he or she ~~the natural guardianship~~
 259 ~~shall pass to the surviving parent, and the right shall continue~~
 260 ~~even though the surviving parent remarries.~~ If the marriage
 261 between the parents is dissolved, the natural guardianship
 262 belongs ~~shall belong~~ to the parent to whom ~~the~~ custody of the
 263 child is awarded. If the parents are given joint custody, then
 264 both ~~shall~~ continue as natural guardians. If the marriage is
 265 dissolved and neither the father nor the mother is given custody
 266 of the child, neither shall act as natural guardian of the
 267 child. The mother of a child born out of wedlock is the natural
 268 guardian of the child and is entitled to primary residential
 269 care and custody of the child unless a court of competent
 270 jurisdiction enters an order stating otherwise.

271 (2) ~~The Natural guardian or~~ guardians are authorized, on
 272 behalf of any of their minor children, to settle and consummate
 273 a settlement of any claim or cause of action accruing to any of

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274 their minor children for damages to the person or property of
 275 any of said minor children and to collect, receive, manage, and
 276 dispose of the proceeds of any such settlement and ~~of any other~~
 277 real or personal property distributed from an estate or trust or
 278 proceeds from a life insurance policy to, or otherwise accruing
 279 to the benefit of, the child during minority, when the amounts
 280 received, in the aggregate, do ~~amount involved in any instance~~
 281 ~~does~~ not exceed \$15,000, without appointment, authority, or
 282 bond.

283 (3) All instruments executed by a natural guardian for the
 284 benefit of the ward under the powers specified ~~provided for~~ in
 285 subsection (2) shall be binding on the ward. The natural
 286 guardian may not, without a court order, use the property of the
 287 ward for the guardian's benefit or to satisfy the guardian's
 288 support obligation to the ward.

289 ~~(4)(a) In any case where a minor has a claim for personal~~
 290 ~~injury, property damage, or wrongful death in which the gross~~
 291 ~~settlement for the claim of the minor exceeds \$15,000, the court~~
 292 ~~may, prior to the approval of the settlement of the minor's~~
 293 ~~claim, appoint a guardian ad litem to represent the minor's~~
 294 ~~interests. In any case in which the gross settlement involving a~~
 295 ~~minor equals or exceeds \$25,000, the court shall, prior to the~~
 296 ~~approval of the settlement of the minor's claim, appoint a~~
 297 ~~guardian ad litem to represent the minor's interests. The~~
 298 ~~appointment of the guardian ad litem must be without the~~
 299 ~~necessity of bond or a notice. The duty of the guardian ad litem~~
 300 ~~is to protect the minor's interests. The procedure for carrying~~
 301 ~~out that duty is as prescribed in the Florida Probate Rules. If~~

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302 ~~a legal guardian of the minor has previously been appointed and~~
 303 ~~has no potential adverse interest to the minor, the court may~~
 304 ~~not appoint a guardian ad litem to represent the minor's~~
 305 ~~interests, unless the court determines that the appointment is~~
 306 ~~otherwise necessary.~~

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

310 Section 4. Section 744.3025, Florida Statutes, is created
 311 to read:

312 744.3025 Claims of minors.--

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

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

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

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

327 (e) A court need not appoint a guardian ad litem for the
 328 minor if a guardian of the minor has previously been appointed
 329 and that guardian has no potential adverse interest to the

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330 minor. A court may appoint a guardian ad litem if the court
 331 believes a guardian ad litem is necessary to protect the
 332 interests of the minor.

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

336 Section 5. Subsection (3) of section 744.3031, Florida
 337 Statutes, is amended, and subsection (8) is added to said
 338 section, to read:

339 744.3031 Emergency temporary guardianship.--

340 (3) The authority of an emergency temporary guardian
 341 expires 90 ~~60~~ days after the date of appointment or when a
 342 guardian is appointed, whichever occurs first. The authority of
 343 the emergency temporary guardian may be extended for an
 344 additional 90 ~~30~~ days upon a showing that the emergency
 345 conditions still exist.

346 (8)(a) An emergency temporary guardian shall file a final
 347 report no later than 30 days after the expiration of the
 348 emergency temporary guardianship.

349 (b) An emergency temporary guardian is a guardian for the
 350 property. The final report must consist of a verified inventory
 351 of the property, as provided in s. 744.365, as of the date the
 352 letters of emergency temporary guardianship were issued, a final
 353 accounting that gives a full and correct account of the receipts
 354 and disbursements of all the property of the ward over which the
 355 guardian had control, and a statement of the property of the
 356 ward on hand at the end of the emergency temporary guardianship.
 357 If the emergency temporary guardian becomes the successor

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358 guardian of the property, the final report must satisfy the
 359 requirements of the initial guardianship report for the guardian
 360 of the property as provided in s. 744.362.

361 (c) If the emergency temporary guardian is a guardian of
 362 the person, the final report must summarize the activities of
 363 the temporary guardian with regard to residential placement,
 364 medical condition, mental health and rehabilitative services,
 365 and the social condition of the ward to the extent of the
 366 authority granted to the temporary guardian in the letters of
 367 guardianship. If the emergency temporary guardian becomes the
 368 successor guardian of the person, the report must satisfy the
 369 requirements of the initial report for a guardian of the person
 370 as stated in s. 744.362.

371 (d) A copy of the final report of the emergency temporary
 372 guardianship shall be served on the successor guardian and the
 373 ward.

374 Section 6. Section 744.304, Florida Statutes, is amended
 375 to read:

376 744.304 Standby guardianship.--

377 (1) Upon a petition by the natural guardians or a guardian
 378 appointed under s. 744.3021, the court may appoint a standby
 379 guardian of the person or property of a minor ~~or consent of both~~
 380 parents, natural or adoptive, if living, or of the surviving
 381 parent, a standby guardian of the person or property of a minor
 382 may be appointed by the court. The court may also appoint an
 383 alternate to the guardian to act if the standby guardian does
 384 not serve or ceases to serve after appointment. Notice of a
 385 hearing on the petition must be served on the parents, natural

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386 | or adoptive, and on any guardian currently serving unless the
 387 | notice is waived in writing by them or waived by the court for
 388 | good cause shown ~~shall renounce, die, or become incapacitated~~
 389 | ~~after the death of the last surviving parent of the minor.~~

390 | (2) Upon petition of a currently serving guardian, a
 391 | standby guardian of the person or property of an incapacitated
 392 | person may be appointed by the court. Notice of the hearing
 393 | shall be served on the ward's next of kin.

394 | (3) The standby guardian or alternate shall be empowered
 395 | to assume the duties of guardianship ~~his or her office~~
 396 | immediately on the death, removal, or resignation of the
 397 | guardian of a minor, or on the death or adjudication of
 398 | incapacity of the last surviving natural guardian ~~or adoptive~~
 399 | ~~parent~~ of a minor, or upon the death, removal, or resignation of
 400 | the guardian for an adult. The; ~~however, such a~~ guardian of the
 401 | ward's property may not be empowered to deal with the ward's
 402 | property, other than to safeguard it, before ~~prior to~~ issuance
 403 | of letters of guardianship. If the ward ~~incapacitated person~~ is
 404 | over the age of 18 years, the court shall conduct a hearing as
 405 | provided in s. 744.331 before confirming the appointment of the
 406 | standby guardian, unless the ward has previously been found to
 407 | be incapacitated.

408 | (4) Within 20 days after assumption of duties as guardian,
 409 | a standby guardian shall petition for confirmation of
 410 | appointment. If the court finds the standby guardian to be
 411 | qualified to serve as guardian under ~~pursuant to~~ ss. 744.309 and
 412 | 744.312, appointment of the guardian must be confirmed. Each
 413 | guardian so confirmed shall file an oath in accordance with s.

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414 744.347, ~~and~~ shall file a bond, and shall submit to a credit and
 415 criminal investigation as set forth in s. 744.3135, if required.
 416 Letters of guardianship must then be issued in the manner
 417 provided in s. 744.345.

418 (5) After the assumption of duties by a standby guardian,
 419 the court shall have jurisdiction over the guardian and the
 420 ward.

421 Section 7. Section 744.3115, Florida Statutes, is amended
 422 to read:

423 744.3115 Advance directives for health care.--In each
 424 proceeding in which a guardian is appointed under this chapter,
 425 the court shall determine whether the ward, prior to incapacity,
 426 has executed any valid advance directive under ~~pursuant to~~
 427 chapter 765. If any ~~such~~ advance directive exists, the court
 428 shall specify in its order and letters of guardianship what
 429 authority, if any, the guardian shall exercise over the
 430 surrogate. Pursuant to the grounds listed in s. 765.105, the
 431 court, upon its own motion, may, with notice to the surrogate
 432 and any other appropriate parties, modify or revoke the
 433 authority of the surrogate to make health care decisions for the
 434 ward. For purposes of this section, the term "health care
 435 decision" has the same meaning as in s. 765.101.

436 Section 8. Section 744.3135, Florida Statutes, is amended
 437 to read:

438 744.3135 Credit and criminal investigation.--

439 (1) The court may require a nonprofessional guardian and
 440 shall require a professional or public guardian, and all
 441 employees of a professional guardian who have a fiduciary

442 responsibility to a ward, to submit, at their own expense, to an
 443 investigation of the guardian's credit history and to undergo
 444 level 2 background screening as required under s. 435.04. If a
 445 credit or criminal investigation is required, the court must
 446 consider the results of any investigation before appointing a
 447 guardian. At any time, the court may require a guardian or the
 448 guardian's employees to submit to an investigation of the
 449 person's credit history and complete a level 1 background
 450 screening as set forth in s. 435.03. The court shall consider
 451 the results of any investigation when reappointing a guardian.
 452 The clerk of the court shall maintain a file on each guardian
 453 appointed by the court and retain in the file documentation of
 454 the result of any investigation conducted under this section. A
 455 professional guardian must pay the clerk of the court a fee of
 456 up to \$7.50 for handling and processing professional guardian
 457 files.

458 (2) The court and the Statewide Public Guardianship Office
 459 shall accept the satisfactory completion of a criminal
 460 background investigation by any method described in this
 461 subsection. A guardian satisfies the requirements of this
 462 section by undergoing:

463 (a) An inkless electronic fingerprint criminal background
 464 investigation. A guardian may use any inkless electronic
 465 fingerprinting equipment used for criminal background
 466 investigations of public employees. The guardian shall pay the
 467 actual costs incurred by the Federal Bureau of Investigation and
 468 the Department of Law Enforcement for the criminal background
 469 investigation. The agency that operates the equipment used by

470 the guardian may charge the guardian an additional fee, not to
 471 exceed \$10, for the use of the equipment. The agency completing
 472 the investigation must immediately send the results of the
 473 criminal background investigation to the clerk of the court and
 474 the Statewide Public Guardianship Office. The clerk of the court
 475 shall maintain the results in the guardian's file and shall make
 476 the results available to the court; or

477 (b) A criminal background investigation using a
 478 fingerprint card. The clerk of the court shall obtain
 479 fingerprint cards from the Federal Bureau of Investigation and
 480 make them available to guardians. Any guardian who is so
 481 required shall have his or her fingerprints taken and forward
 482 the proper fingerprint card along with the necessary fee to the
 483 Florida Department of Law Enforcement for processing. The
 484 professional guardian shall pay to the clerk of the court a fee
 485 of up to \$7.50 for handling and processing professional guardian
 486 files. The results of the fingerprint card background
 487 investigations ~~checks~~ shall be forwarded to the clerk of the
 488 court who shall maintain the results in the guardian's a
 489 guardian file and shall make the results available to the court
 490 and the Statewide Public Guardianship Office.

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 his or her own expense, a level 2
 494 background screening as set forth in s. 435.04 before and at
 495 least once every 5 years after the date the guardian is
 496 appointed. A professional guardian, and each employee of a
 497 professional guardian who has a fiduciary responsibility to a

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498 ward, must complete, at his or her own expense, a level 1
499 background screening as set forth in s. 435.03 at least once
500 every 2 years after the date the guardian is appointed. However,
501 a person is not required to resubmit fingerprints for a criminal
502 background investigation if he or she has been screened using
503 inkless electronic fingerprinting equipment that is capable of
504 notifying the clerk of the court of any crime charged against
505 the person in the State of Florida or elsewhere, as appropriate.

506 (b) Effective December 15, 2005, all fingerprints
507 electronically submitted to the Department of Law Enforcement
508 under this section shall be retained by the Department of Law
509 Enforcement in a manner provided by rule and entered in the
510 statewide automated fingerprint identification system authorized
511 by s. 943.05(2)(b). The fingerprints shall thereafter be
512 available for all purposes and uses authorized for arrest
513 fingerprint cards entered in the statewide automated fingerprint
514 identification system under s. 943.051.

515 (c) Effective December 15, 2005, the Department of Law
516 Enforcement shall search all arrest fingerprint cards received
517 under s. 943.051 against the fingerprints retained in the
518 statewide automated fingerprint identification system under
519 paragraph (b). Any arrest record that is identified with the
520 fingerprints of a person described in this paragraph must be
521 reported as soon as possible to the clerk of the court. The
522 clerk of the court must forward any arrest record received for a
523 professional guardian to the Statewide Public Guardianship
524 Office within 5 days. Each guardian who elects to undergo an
525 inkless electronic background investigation shall participate in

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526 this search process by paying an annual fee to the clerk of the
527 court and by informing the clerk of the court of any change in
528 the status of his or her guardianship appointment. The amount of
529 the annual fee to be imposed upon each clerk of the court for
530 performing these searches and the procedures for the retention
531 of guardian fingerprints and the dissemination of search results
532 shall be established by rule of the Department of Law
533 Enforcement. The fee may be borne by the clerk of the court or
534 the guardian, but may not exceed \$10.

535 (4)(a) A professional guardian, and each employee of a
536 professional guardian who has a fiduciary responsibility to a
537 ward, must complete, at his or her own expense, an investigation
538 of his or her credit history before and at least once every 2
539 years after the date of the guardian's appointment.

540 (b) The Statewide Public Guardianship Office shall adopt a
541 rule detailing the acceptable methods for completing a credit
542 investigation under this section. If appropriate, the Statewide
543 Public Guardianship Office may administer credit investigations.
544 If the office chooses to administer the credit investigation,
545 the office may adopt a rule setting a fee, not to exceed \$25, to
546 reimburse the costs associated with the administration of a
547 credit investigation.

548 (5) The Statewide Public Guardianship Office may inspect
549 at any time the results of any credit or criminal investigation
550 of a public or professional guardian conducted under this
551 section. The office shall maintain copies of the credit or
552 criminal results in the guardian's registration file. If the
553 results of a credit or criminal investigation of a public or

554 professional guardian have not been forwarded to the Statewide
 555 Public Guardianship Office by the investigating agency, the
 556 clerk of the court shall forward copies of the results of the
 557 investigations to the office upon receiving them. ~~If credit or~~
 558 ~~criminal investigations are required, the court must consider~~
 559 ~~the results of the investigations before appointing a guardian.~~
 560 ~~Professional guardians and all employees of a professional~~
 561 ~~guardian who have a fiduciary responsibility to a ward, so~~
 562 ~~appointed, must resubmit, at their own expense, to an~~
 563 ~~investigation of credit history, and undergo level 1 background~~
 564 ~~screening as required under s. 435.03, at least every 2 years~~
 565 ~~after the date of their appointment. At any time, the court may~~
 566 ~~require guardians or their employees to submit to an~~
 567 ~~investigation of credit history and undergo level 1 background~~
 568 ~~screening as required under s. 435.03. The court must consider~~
 569 ~~the results of these investigations in reappointing a guardian.~~

570 ~~(1) Upon receiving the results of a credit or criminal~~
 571 ~~investigation of any public or professional guardian, the clerk~~
 572 ~~of the court shall forward copies of the results to the~~
 573 ~~Statewide Public Guardianship Office in order that the results~~
 574 ~~may be maintained in the guardian's registration file.~~

575 (6)(2) The requirements of this section do ~~does~~ not apply
 576 to a professional guardian, or to the employees of a
 577 professional guardian, that ~~which~~ is a trust company, a state
 578 banking corporation or state savings association authorized and
 579 qualified to exercise fiduciary powers in this state, or a
 580 national banking association or federal savings and loan

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581 association authorized and qualified to exercise fiduciary
582 powers in this state.

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

585 744.3145 Guardian education requirements.--

586 (4) Each person appointed by the court to be a guardian
587 must complete the required number of hours of instruction and
588 education within 4 months ~~1-year~~ after his or her appointment as
589 guardian. The instruction and education must be completed
590 through a course approved by the chief judge of the circuit
591 court and taught by a court-approved organization. Court-
592 approved organizations may include, but are not limited to,
593 community or junior colleges, guardianship organizations, and
594 the local bar association or The Florida Bar.

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

597 744.3215 Rights of persons determined incapacitated.--

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

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

602 (2) Rights that may be removed from a person by an order
603 determining incapacity but not delegated to a guardian include
604 the right:

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

607 (b) To vote.

608 (c) To personally apply for government benefits.

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

610 (e) To travel.

611 (f) To seek or retain employment.

612 Section 11. Subsections (2), (3), and (7) of section
613 744.331, Florida Statutes, are amended to read:

614 744.331 Procedures to determine incapacity.--

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

616 (a) When a court appoints an attorney for an alleged
617 incapacitated person, the court must appoint an attorney who is
618 included in the attorney registry compiled by the circuit's
619 Article V indigent services committee. Appointments must be made
620 on a rotating basis, taking into consideration conflicts arising
621 under this chapter.

622 (b)(a) The court shall appoint an attorney for each person
623 alleged to be incapacitated in all cases involving a petition
624 for adjudication of incapacity. The alleged incapacitated
625 person may substitute her or his own attorney for the attorney
626 appointed by the court, subject to court approval.

627 (c)(b) Any attorney representing an alleged incapacitated
628 person may not serve as guardian of the alleged incapacitated
629 person or as counsel for the guardian of the alleged
630 incapacitated person or the petitioner.

631 (d) Effective January 1, 2006, an attorney seeking to be
632 appointed by a court for incapacity and guardianship proceedings
633 must have completed a minimum of 8 hours of education in
634 guardianship. A court may waive the initial training requirement
635 for an attorney who has served as a court-appointed attorney in

636 incapacity proceedings or as an attorney of record for guardians
637 for not less than 3 years.

638 (3) EXAMINING COMMITTEE.--

639 (a) Within 5 days after a petition for determination of
640 incapacity has been filed, the court shall appoint an examining
641 committee consisting of three members. One member must be a
642 psychiatrist or other physician. The remaining members must be
643 either a psychologist, gerontologist, another psychiatrist, or
644 other physician, a registered nurse, nurse practitioner,
645 licensed social worker, a person with an advanced degree in
646 gerontology from an accredited institution of higher education,
647 or other person who by knowledge, skill, experience, training,
648 or education may, in the court's discretion, advise the court in
649 the form of an expert opinion, including a professional
650 guardian. One of three members of the committee must have
651 knowledge of the type of incapacity alleged in the petition.
652 Unless good cause is shown, the attending or family physician
653 may not be appointed to the committee. If the attending or
654 family physician is available for consultation, the committee
655 must consult with the physician. Members of the examining
656 committee may not be related to or associated with one another,
657 ~~or~~ with the petitioner, with counsel for the petitioner or the
658 proposed guardian, or with the person alleged to be totally or
659 partially incapacitated. A member may not be employed by any
660 private or governmental agency that has custody of, or
661 furnishes, services or subsidies, directly or indirectly, to the
662 person or the family of the person alleged to be incapacitated
663 or for whom a guardianship is sought. A petitioner may not

664 | serve as a member of the examining committee. Members of the
 665 | examining committee must be able to communicate, either directly
 666 | or through an interpreter, in the language that the alleged
 667 | incapacitated person speaks or to communicate in a medium
 668 | understandable to the alleged incapacitated person if she or he
 669 | is able to communicate. The clerk of the court shall send notice
 670 | of the appointment to each person appointed no later than 3 days
 671 | after the court's appointment.

672 | (b) A person who has been appointed to serve as a member
 673 | of an examining committee to examine an alleged incapacitated
 674 | person may not thereafter be appointed as a guardian for the
 675 | person who was the subject of the examination.

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

682 | (d) A member of an examining committee must complete a
 683 | minimum of 4 hours of initial training. The person must complete
 684 | 2 hours of continuing education during each 2-year period after
 685 | the initial training. The initial training and continuing
 686 | education program must be developed under the supervision of the
 687 | Statewide Public Guardianship Office; in consultation with the
 688 | Florida Conference of Circuit Court Judges; the Elder Law and
 689 | the Real Property, Probate and Trust Law sections of The Florida
 690 | Bar; the Florida State Guardianship Association; and the Florida
 691 | Guardianship Foundation. The court may waive the initial

692 training requirement for a person who has served for not less
 693 than 5 years on examining committees. If a person wishes to
 694 obtain his or her continuing education on the Internet or by
 695 watching a video course, the person must first obtain the
 696 approval of the chief judge before taking an Internet or video
 697 course.

698 (e)~~(b)~~ Each member of the examining committee shall
 699 examine the person. Each ~~The~~ examining committee member must
 700 ~~shall~~ determine the alleged incapacitated person's ability to
 701 exercise those rights specified in s. 744.3215. In addition to
 702 the examination, each ~~the~~ examining committee member must ~~shall~~
 703 have access to, and may consider, previous examinations of the
 704 person, including, but not limited to, habilitation plans,
 705 school records, and psychological and psychosocial reports
 706 voluntarily offered for use by the alleged incapacitated person.
 707 Each member of the examining committee must ~~shall~~ submit a
 708 report within 15 days after appointment.

709 (f)~~(e)~~ The examination of the alleged incapacitated person
 710 must include a comprehensive examination, a report of which
 711 shall be filed by the examining committee as part of its written
 712 report. The comprehensive examination report should be an
 713 essential element, but not necessarily the only element, used in
 714 making a capacity and guardianship decision. The comprehensive
 715 examination must include, if indicated:

- 716 1. A physical examination;
- 717 2. A mental health examination; and
- 718 3. A functional assessment.

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720 If any of these three aspects of the examination is not
721 indicated or cannot be accomplished for any reason, the written
722 report must explain the reasons for its omission.

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

724 1. To the extent possible, a diagnosis, prognosis, and
725 recommended course of treatment.

726 2. An evaluation of the alleged incapacitated person's
727 ability to retain her or his rights, including, without
728 limitation, the rights to marry; vote; contract; manage or
729 dispose of property; have a driver's license; determine her or
730 his residence; consent to medical treatment; and make decisions
731 affecting her or his social environment.

732 3. The results of the comprehensive examination and the
733 committee members' assessment of information provided by the
734 attending or family physician, if any.

735 4. A description of any matters with respect to which the
736 person lacks the capacity to exercise rights, the extent of that
737 incapacity, and the factual basis for the determination that the
738 person lacks that capacity.

739 5. The names of all persons present during the time the
740 committee member conducted his or her examination. If a person
741 other than the person who is the subject of the examination
742 supplies answers posed to the alleged incapacitated person, the
743 report must include the response and the name of the person
744 supplying the answer.

745 6.5- The signature of each member of the committee and the
746 date and time each member conducted his or her examination.

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

751 (7) FEES.--

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

755 (b) The fees awarded under paragraph (a) shall be paid by
756 the guardian from the property of the ward or, if the ward is
757 indigent, by the state. The state shall have a creditor's claim
758 against the guardianship property for any amounts paid under
759 this section. The state may file its claim within 90 days after
760 the entry of an order awarding attorney ad litem fees. If the
761 state does not file its claim within the 90-day period, the
762 state is thereafter barred from asserting the claim. Upon
763 petition by the state for payment of the claim, the court shall
764 enter an order authorizing immediate payment out of the property
765 of the ward. The state shall keep a record of the ~~such~~ payments.

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

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

772 744.341 Voluntary guardianship.--

773 (4) A guardian must include in the annual report filed
774 with the court a certificate from a licensed physician who

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775 examined the ward not more than 90 days before the annual report
 776 is filed with the court. The certificate must certify that the
 777 ward is competent to understand the nature of the guardianship
 778 and of the ward's authority to delegate powers to the voluntary
 779 guardian.

780 (5)(4) A voluntary guardianship may be terminated by the
 781 ward by filing a notice with the court that the voluntary
 782 guardianship is terminated. The notice must be accompanied by a
 783 certificate from a licensed physician who has examined the ward
 784 not more than 30 days before the ward filed the notice with the
 785 court. The physician must certify that the ward is competent to
 786 understand the implications of terminating the guardianship. A
 787 copy of the notice and certificate must be served on all
 788 interested persons.

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

791 744.361 Powers and duties of guardian.--

792 (9) A professional guardian must ensure that each of the
 793 guardian's wards is personally visited by the guardian or one of
 794 the guardian's professional staff at least once each calendar
 795 quarter. During the personal visit, the guardian or the
 796 guardian's professional staff person shall assess:

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

798 (b) The appropriateness of the ward's current living
 799 situation.

800 (c) The need for any additional services and the necessity
 801 for continuation of existing services, taking into consideration

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802 | all aspects of social, psychological, educational, direct
 803 | service, health, and personal care needs.

804 |
 805 | This subsection does not apply to a professional guardian who
 806 | has been appointed only as guardian of the property.

807 | Section 14. Subsection (2) of section 744.365, Florida
 808 | Statutes, is amended to read:

809 | 744.365 Verified inventory.--

810 | (2) CONTENTS.--The verified inventory must include the
 811 | following:

812 | (a) All property of the ward, real and personal, that has
 813 | come into the guardian's possession or knowledge, including a
 814 | statement of all encumbrances, liens, and other secured claims
 815 | on any item, any claims against the property, ~~and~~ any cause of
 816 | action accruing to the ward, and any trusts of which the ward is
 817 | a beneficiary;

818 | (b) The location of the real and personal property in
 819 | sufficient detail so that it may be clearly identified or
 820 | located; and

821 | (c) A description of all sources of income, including,
 822 | without limitation, social security benefits and pensions.

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

825 | 744.367 Duty to file annual guardianship report.--

826 | (1) Unless the court requires filing on a calendar-year
 827 | basis, each guardian of the person shall file with the court an
 828 | annual guardianship plan within 90 days after the last day of
 829 | the anniversary month the letters of guardianship were signed,

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830 and the plan must cover the coming fiscal year, ending on the
831 last day in such anniversary month. If the court requires
832 calendar-year filing, the guardianship plan must be filed on or
833 before April 1 of each year ~~within 90 days after the end of the~~
834 ~~calendar year.~~

835 (3) The annual guardianship report of a guardian of the
836 property must consist of an annual accounting, and the annual
837 report of a guardian of the person ~~of an incapacitated person~~
838 must consist of an annual guardianship plan. The annual report
839 shall be served on the ward, unless the ward is a minor ~~under~~
840 ~~the age of 14 years~~ or is totally incapacitated, and on the
841 attorney for the ward, if any. The guardian shall provide a copy
842 to any other person as the court may direct.

843 Section 16. Section 744.3675, Florida Statutes, is amended
844 to read:

845 744.3675 Annual guardianship plan.--Each guardian of the
846 person must file with the court an annual guardianship plan
847 which updates information about the condition of the ward. The
848 annual plan must specify the current needs of the ward and how
849 those needs are proposed to be met in the coming year.

850 (1) Each plan for an adult ward must, if applicable,
851 include:

852 (a) Information concerning the residence of the ward,
853 including:

- 854 1. The ward's address at the time of filing the plan;
- 855 2. The name and address of each place where the ward was
856 maintained during the preceding year;
- 857 3. The length of stay of the ward at each place;

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858 4. A statement of whether the current residential setting
859 is best suited for the current needs of the ward; and

860 5. Plans for ensuring during the coming year that the ward
861 is in the best residential setting to meet his or her needs.

862 (b) Information concerning the medical and mental health
863 conditions ~~condition~~ and treatment and rehabilitation needs of
864 the ward, including:

865 1. A resume of any professional medical treatment given to
866 the ward during the preceding year;

867 2. The report of a physician who examined the ward no more
868 than 90 days before the beginning of the applicable reporting
869 period. The ~~Such~~ report must contain an evaluation of the ward's
870 condition and a statement of the current level of capacity of
871 the ward; and

872 3. The plan for providing ~~provision~~ of medical, mental
873 health, and rehabilitative services in the coming year.

874 (c) Information concerning the social condition of the
875 ward, including:

876 1. The social and personal services currently used
877 ~~utilized~~ by the ward.;

878 2. The social skills of the ward, including a statement of
879 how well the ward communicates and maintains interpersonal
880 relationships. ~~with others;~~

881 ~~3. A description of the ward's activities at communication~~
882 ~~and visitation; and~~

883 ~~3.4.~~ The social needs of the ward.

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

886 (a) Information concerning the residence of the minor,
887 including:

- 888 1. The minor's address at the time of filing the plan.
889 2. The name and address of each place where the minor
890 lived during the preceding year.

891 (b) Information concerning the medical and mental health
892 conditions and treatment and rehabilitation needs of the minor,
893 including:

- 894 1. A resume of any professional medical treatment given to
895 the minor during the preceding year.
896 2. A report from the physician who examined the minor no
897 more than 180 days before the beginning of the applicable
898 reporting period that contains an evaluation of the minor's
899 physical and mental conditions.
900 3. The plan for providing medical services in the coming
901 year.

902 (c) Information concerning the education of the minor,
903 including:

- 904 1. A summary of the school progress report.
905 2. The social development of the minor, including a
906 statement of how well the minor communicates and maintains
907 interpersonal relationships.
908 3. The social needs of the minor.

909 (3)(2) Each plan for an adult ward must address the issue
910 of restoration of rights to the ward and include:

- 911 (a) A summary of activities during the preceding year
912 which were designed to enhance ~~increase~~ the capacity of the
913 ward;

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

916 (c) A statement of whether restoration of any rights will
917 be sought.

918 ~~(4)~~~~(3)~~ The court, in its discretion, may require
919 reexamination of the ward by a physician at any time.

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

922 744.3678 Annual accounting.--

923 (2) The annual accounting must include:

924 (a) A full and correct account of the receipts and
925 disbursements of all of the ward's property over which the
926 guardian has control and a statement of the ward's property on
927 hand at the end of the accounting period. This paragraph does
928 not apply to any property under the control of the guardian,
929 including any trust of which the ward is a beneficiary but which
930 is not under the control or administration of the guardian.

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

934 (3) The guardian must obtain a receipt, ~~or canceled check,~~
935 or other proof of payment for all expenditures and disbursements
936 made on behalf of the ward. The guardian must preserve all
937 evidence of payment ~~the receipts and canceled checks,~~ along with
938 other substantiating papers, for a period of 3 years after his
939 or her discharge. The receipts, proofs of payment ~~checks,~~ and
940 substantiating papers need not be filed with the court but shall
941 be made available for inspection and review at the ~~such~~ time and

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942 ~~in such~~ place and before such persons as the court may ~~from time~~
943 ~~to time~~ order.

944 Section 18. Section 744.3679, Florida Statutes, is amended
945 to read:

946 744.3679 Simplified accounting procedures in certain
947 cases.--

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

954 (a) The original or a certified copy of the year-end
955 statement of the ward's account from the financial institution;
956 and

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

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

962 (2)(3) The accounting allowed by subsection (1) is in lieu
963 of the accounting and auditing procedures under s. 744.3678(2)
964 ~~ss. 744.3678 and 744.368(1)(f)~~. However, any interested party
965 may seek judicial review as provided in s. 744.3685.

966 (3)(4) The guardian need not be represented by an attorney
967 in order to file the annual accounting allowed by subsection
968 (1).

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

971 744.368 Responsibilities of the clerk of the circuit
972 court.--

973 (3) Within 90 days after the filing of the verified
974 inventory and accountings ~~initial or annual guardianship report~~
975 by a guardian of the property, the clerk shall audit the
976 verified inventory and ~~or~~ the accountings ~~annual accounting~~. The
977 clerk shall advise the court of the results of the audit.

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

980 744.441 Powers of guardian upon court approval.--After
981 obtaining approval of the court pursuant to a petition for
982 authorization to act, a plenary guardian of the property, or a
983 limited guardian of the property within the powers granted by
984 the order appointing the guardian or an approved annual or
985 amended guardianship report, may:

986 (19) Create or amend revocable or irrevocable trusts of
987 property of the ward's estate which may extend beyond the
988 disability or life of the ward in connection with estate, gift,
989 income, or other tax planning or in connection with estate
990 planning. The court shall retain oversight of the assets
991 transferred to a trust, unless otherwise ordered by the court.

992 Section 21. Section 744.442, Florida Statutes, is created
993 to read:

994 744.442 Delegation of authority.--

995 (1) A guardian may designate a surrogate guardian to
996 exercise the powers of the guardian if the guardian is

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997 unavailable to act. A person designated as a surrogate guardian
 998 under this section must be a professional guardian.

999 (2)(a) A guardian must file a petition with the court
 1000 requesting permission to designate a surrogate guardian.

1001 (b) If the court approves the designation, the order must
 1002 specify the name and business address of the surrogate guardian
 1003 and the duration of appointment, which may not exceed 30 days.
 1004 The court may extend the appointment for good cause shown. The
 1005 surrogate guardian may exercise all powers of the guardian
 1006 unless limited by order of the court. The surrogate guardian
 1007 must file with the court an oath swearing or affirming that he
 1008 or she will faithfully perform the duties delegated. The court
 1009 may require the surrogate guardian to post a bond.

1010 (3) This section does not limit the responsibility of the
 1011 guardian to the ward and to the court. The guardian is liable
 1012 for the acts of the surrogate guardian. The guardian may
 1013 terminate the authority of the surrogate guardian by filing a
 1014 written notice of the termination with the court.

1015 (4) The surrogate guardian is subject to the jurisdiction
 1016 of the court as if appointed to serve as guardian.

1017 Section 22. Paragraphs (c), (e), and (f) of subsection (2)
 1018 and subsection (4) of section 744.464, Florida Statutes, are
 1019 amended to read:

1020 744.464 Restoration to capacity.--

1021 (2) SUGGESTION OF CAPACITY.--

1022 (c) The court shall immediately send notice of the filing
 1023 of the suggestion of capacity to the ward, the guardian, the
 1024 attorney for the ward, if any, ~~the state attorney,~~ and any other

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1025 interested persons designated by the court. Formal notice must
 1026 be served on the guardian. Informal notice may be served on
 1027 other persons. Notice need not be served on the person who filed
 1028 the suggestion of capacity.

1029 (e) If an objection is timely filed, or if the medical
 1030 examination suggests that full restoration is not appropriate,
 1031 the court shall set the matter for hearing. If the ward does
 1032 not have an attorney, the court shall appoint one to represent
 1033 the ward.

1034 (f) Notice of the hearing and copies of the objections and
 1035 medical examination reports shall be served upon the ward, the
 1036 ward's attorney, the guardian, ~~the state attorney,~~ the ward's
 1037 next of kin, and any other interested persons as directed by the
 1038 court.

1039 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~
 1040 ~~CAPACITY. Notwithstanding this section, a suggestion of~~
 1041 ~~capacity may not be filed within 90 days after an adjudication~~
 1042 ~~of incapacity or denial of restoration, unless good cause is~~
 1043 ~~shown.~~

1044 Section 23. Paragraph (a) of subsection (19) of section
 1045 744.474, Florida Statutes, is amended, and paragraph (b) of said
 1046 subsection is redesignated as subsection (20) of said section
 1047 and amended, to read:

1048 744.474 Reasons for removal of guardian.--A guardian may
 1049 be removed for any of the following reasons, and the removal
 1050 shall be in addition to any other penalties prescribed by law:

1051 (19) Upon a showing by a person who did not receive notice
 1052 of the petition for adjudication of incapacity, when such notice

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1053 is required, or who is related to the ward within the
 1054 relationships specified for nonresident relatives in ss.
 1055 744.309(2) and 744.312(2) and who has not previously been
 1056 rejected by the court as a guardian that:

1057 ~~(a)~~ the current guardian is not a family member and
 1058 subsection (20) applies.

1059 ~~(20)(b)~~ Upon a showing that removal of the current
 1060 guardian is in the best interest of the ward, the court may
 1061 remove the current guardian and appoint the petitioner, or such
 1062 person as the court deems in the best interest of the ward,
 1063 either as guardian of the person or of the property, or both.

1064 Section 24. Section 744.511, Florida Statutes, is amended
 1065 to read:

1066 744.511 Accounting upon removal.--A removed guardian shall
 1067 file with the court a true, complete, and final report of his or
 1068 her guardianship within 20 days after removal and shall serve a
 1069 copy on the successor guardian and the ward, unless the ward is
 1070 a minor ~~under 14 years of age~~ or has been determined to be
 1071 totally incapacitated.

1072 Section 25. Section 744.527, Florida Statutes, is amended
 1073 to read:

1074 744.527 Final reports and application for discharge;
 1075 hearing.--

1076 (1) When the court terminates the guardianship for any of
 1077 the reasons set forth in s. 744.521, the guardian shall promptly
 1078 file his or her final report. If the ward has died, the guardian
 1079 must file a final report with the court no later than 45 days
 1080 after he or she has been served with letters of administration

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1081 | or letters of curatorship. If no objections are filed and if it
 1082 | appears that the guardian has made full and complete
 1083 | distribution to the person entitled and has otherwise faithfully
 1084 | discharged his or her duties, the court shall approve the final
 1085 | report. If objections are filed, the court shall conduct a
 1086 | hearing in the same manner as provided for a hearing on
 1087 | objections to annual guardianship reports.

1088 | (2) The guardian applying for discharge may ~~is authorized~~
 1089 | ~~to~~ retain from the funds in his or her possession a sufficient
 1090 | amount to pay the final costs of administration, including
 1091 | guardian and attorney's fees regardless of the death of the
 1092 | ward, accruing between the filing of his or her final returns
 1093 | and the order of discharge.

1094 | Section 26. Subsection (3) of section 744.528, Florida
 1095 | Statutes, is amended to read:

1096 | 744.528 Discharge of guardian named as personal
 1097 | representative.--

1098 | (3) Any interested person may file a notice of ~~The court~~
 1099 | ~~shall set~~ a hearing on any objections filed by the
 1100 | beneficiaries. Notice of the hearing must ~~shall~~ be served upon
 1101 | the guardian, beneficiaries of the ward's estate, and any other
 1102 | person to whom the court directs service. If a notice of hearing
 1103 | on the objections is not served within 90 days after filing of
 1104 | the objections, the objections are deemed abandoned.

1105 | Section 27. Subsection (6) of section 744.708, Florida
 1106 | Statutes, is amended to read:

1107 | 744.708 Reports and standards.--

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1108 (6) A ~~The~~ public guardian shall ensure that each of the
 1109 guardian's wards is personally visited ~~ward is seen~~ by the
 1110 public guardian or by a professional staff person of the public
 1111 guardian at least once each calendar quarter ~~four times a year~~.
 1112 During this personal visit, the public guardian or the
 1113 professional staff person shall assess:

1114 (a) The ward's physical appearance and condition.

1115 (b) The appropriateness of the ward's current living
 1116 situation.

1117 (c) The need for any additional services and the necessity
 1118 for continuation of existing services, taking into consideration
 1119 all aspects of social, psychological, educational, direct
 1120 service, health, and personal care needs.

1121 Section 28. Paragraph (a) of subsection (5) of section
 1122 765.101, Florida Statutes, is amended to read:

1123 765.101 Definitions.--As used in this chapter:

1124 (5) "Health care decision" means:

1125 (a) Informed consent, refusal of consent, or withdrawal of
 1126 consent to any and all health care, including life-prolonging
 1127 procedures and mental health treatment, unless otherwise stated
 1128 in the advance directives.

1129 Section 29. Section 28.345, Florida Statutes, is amended
 1130 to read:

1131 28.345 Exemption from court-related fees and
 1132 charges.--Notwithstanding any other ~~provision of this chapter or~~
 1133 law to the contrary, judges, state attorneys, guardians ad
 1134 litem, public guardians, and public defenders, acting in their
 1135 official capacity, and state agencies, are exempt from all

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1136 | court-related fees and charges assessed by the clerks of the
1137 | circuit courts.

1138 | Section 30. Paragraph (c) of subsection (8) of section
1139 | 121.091, Florida Statutes, is amended to read:

1140 | 121.091 Benefits payable under the system.--Benefits may
1141 | not be paid under this section unless the member has terminated
1142 | employment as provided in s. 121.021(39)(a) or begun
1143 | participation in the Deferred Retirement Option Program as
1144 | provided in subsection (13), and a proper application has been
1145 | filed in the manner prescribed by the department. The department
1146 | may cancel an application for retirement benefits when the
1147 | member or beneficiary fails to timely provide the information
1148 | and documents required by this chapter and the department's
1149 | rules. The department shall adopt rules establishing procedures
1150 | for application for retirement benefits and for the cancellation
1151 | of such application when the required information or documents
1152 | are not received.

1153 | (8) DESIGNATION OF BENEFICIARIES.--

1154 | (c) Notwithstanding the member's designation of benefits
1155 | to be paid through a trust to a beneficiary that is a natural
1156 | person as provided in s. 121.021(46), and notwithstanding the
1157 | provisions of the trust, benefits shall be paid directly to the
1158 | beneficiary if the ~~such~~ person is no longer a minor or an
1159 | incapacitated person as defined in s. 744.102(12)~~(11)~~ and
1160 | (13)~~(12)~~.

1161 | Section 31. Subsection (1) and paragraphs (b), (d), and
1162 | (f) of subsection (4) of section 709.08, Florida Statutes, are
1163 | amended to read:

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1164 709.08 Durable power of attorney.--
 1165 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
 1166 power of attorney is a written power of attorney by which a
 1167 principal designates another as the principal's attorney in
 1168 fact. The durable power of attorney must be in writing, must be
 1169 executed with the same formalities required for the conveyance
 1170 of real property by Florida law, and must contain the words:
 1171 "This durable power of attorney is not affected by subsequent
 1172 incapacity of the principal except as provided in s. 709.08,
 1173 Florida Statutes"; or similar words that show the principal's
 1174 intent that the authority conferred is exercisable
 1175 notwithstanding the principal's subsequent incapacity, except as
 1176 otherwise provided by this section. The durable power of
 1177 attorney is exercisable as of the date of execution; however, if
 1178 the durable power of attorney is conditioned upon the
 1179 principal's lack of capacity to manage property as defined in s.
 1180 744.102(12)(~~11~~)(a), the durable power of attorney is exercisable
 1181 upon the delivery of affidavits in paragraphs (4)(c) and (d) to
 1182 the third party.
 1183 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;
 1184 AFFIDAVITS.--
 1185 (b) Any third party may rely upon the authority granted in
 1186 a durable power of attorney that is conditioned on the
 1187 principal's lack of capacity to manage property as defined in s.
 1188 744.102(12)(~~11~~)(a) only after receiving the affidavits provided
 1189 in paragraphs (c) and (d), and such reliance shall end when the
 1190 third party has received notice as provided in subsection (5).

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1191 (d) A determination that a principal lacks the capacity to
 1192 manage property as defined in s. 744.102(12)(~~11~~)(a) must be made
 1193 and evidenced by the affidavit of a physician licensed to
 1194 practice medicine pursuant to chapters 458 and 459 as of the
 1195 date of the affidavit. A judicial determination that the
 1196 principal lacks the capacity to manage property pursuant to
 1197 chapter 744 is not required prior to the determination by the
 1198 physician and the execution of the affidavit. For purposes of
 1199 this section, the physician executing the affidavit must be the
 1200 primary physician who has responsibility for the treatment and
 1201 care of the principal. The affidavit executed by a physician
 1202 must state where the physician is licensed to practice medicine,
 1203 that the physician is the primary physician who has
 1204 responsibility for the treatment and care of the principal, and
 1205 that the physician believes that the principal lacks the
 1206 capacity to manage property as defined in s. 744.102(12)(~~11~~)(a).
 1207 The affidavit may, but need not, be in the following form:

1208
 1209 STATE OF _____
 1210 COUNTY OF _____

1211
 1212 Before me, the undersigned authority, personally appeared
 1213 (name of physician) , Affiant, who swore or affirmed that:

- 1214 1. Affiant is a physician licensed to practice medicine in
 1215 (name of state, territory, or foreign country) .
 1216 2. Affiant is the primary physician who has responsibility
 1217 for the treatment and care of (principal's name) .

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1218 3. To the best of Affiant's knowledge after reasonable
 1219 inquiry, Affiant believes that the principal lacks the capacity
 1220 to manage property, including taking those actions necessary to
 1221 obtain, administer, and dispose of real and personal property,
 1222 intangible property, business property, benefits, and income.

1223
 1224
 1225 _____

1226 (Affiant)

1227
 1228 Sworn to (or affirmed) and subscribed before me this (day
 1229 of) (month) , (year) , by (name of person making
 1230 statement)

1231
 1232 (Signature of Notary Public-State of Florida)

1233
 1234 (Print, Type, or Stamp Commissioned Name of Notary Public)

1235
 1236 Personally Known OR Produced Identification
 1237 (Type of Identification Produced)

1238 (f) A third party may not rely on the authority granted in
 1239 a durable power of attorney conditioned on the principal's lack
 1240 of capacity to manage property as defined in s.

1241 744.102(12)~~(11)~~(a) when any affidavit presented has been
 1242 executed more than 6 months prior to the first presentation of
 1243 the durable power of attorney to the third party.

1244 Section 32. Subsection (3) of section 744.1085, Florida
 1245 Statutes, is amended to read:

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1246 744.1085 Regulation of professional guardians;
1247 application; bond required; educational requirements.--
1248 (3) Each professional guardian defined in s.
1249 744.102(17)(~~16~~) and public guardian must receive a minimum of 40
1250 hours of instruction and training. Each professional guardian
1251 must receive a minimum of 16 hours of continuing education every
1252 2 calendar years after the year in which the initial 40-hour
1253 educational requirement is met. The instruction and education
1254 must be completed through a course approved or offered by the
1255 Statewide Public Guardianship Office. The expenses incurred to
1256 satisfy the educational requirements prescribed in this section
1257 may not be paid with the assets of any ward. This subsection
1258 does not apply to any attorney who is licensed to practice law
1259 in this state.

1260 Section 33. For the purpose of incorporating the amendment
1261 made by this act to section 744.3215, Florida Statutes, in a
1262 reference thereto, subsection (4) of section 117.107, Florida
1263 Statutes, is reenacted to read:

1264 117.107 Prohibited acts.--

1265 (4) A notary public may not take the acknowledgment of or
1266 administer an oath to a person whom the notary public actually
1267 knows to have been adjudicated mentally incapacitated by a court
1268 of competent jurisdiction, where the acknowledgment or oath
1269 necessitates the exercise of a right that has been removed
1270 pursuant to s. 744.3215(2) or (3), and where the person has not
1271 been restored to capacity as a matter of record.

1272 Section 34. Subsection (13) of section 318.18, Florida
1273 Statutes, is amended to read:

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1274 318.18 Amount of civil penalties.--The penalties required
1275 for a noncriminal disposition pursuant to s. 318.14 are as
1276 follows:

1277 (13) In addition to any penalties imposed for noncriminal
1278 traffic infractions under ~~pursuant to~~ this chapter or imposed
1279 for criminal violations listed in s. 318.17, notwithstanding s.
1280 318.121, a board of county commissioners or any unit of local
1281 government which is consolidated as provided by s. 9, Art. VIII
1282 of the State Constitution of 1885, as preserved by s. 6(e), Art.
1283 VIII of the Constitution of 1968:

1284 (a) May impose by ordinance a surcharge of up to \$15 for
1285 any infraction or violation to fund state court facilities. The
1286 court may ~~shall~~ not waive this surcharge.

1287 (b) That imposed increased fees or service charges by
1288 ordinance under s. 28.2401, s. 28.241, or s. 34.041 for the
1289 purpose of securing payment of the principal and interest on
1290 bonds issued by the county before July 1, 2003, to finance state
1291 court facilities, may impose by ordinance a surcharge for any
1292 infraction or violation for the exclusive purpose of securing
1293 payment of the principal and interest on bonds issued by the
1294 county before July 1, 2003, to fund state court facilities until
1295 the date of stated maturity. The court may ~~shall~~ not waive this
1296 surcharge. The ~~Such~~ surcharge may not exceed an amount per
1297 violation calculated as the quotient of the maximum annual
1298 payment of the principal and interest on the bonds as of July 1,
1299 2003, divided by the number of traffic citations for county
1300 fiscal year 2002-2003 certified as paid by the clerk of the
1301 court of the county. The ~~Such~~ quotient shall be rounded up to

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1302 the next highest dollar amount. The bonds may be refunded only
 1303 if savings will be realized on payments of debt service and the
 1304 refunding bonds are scheduled to mature on the same date or
 1305 before the bonds being refunded.

1306 (c) May impose an additional \$15 surcharge to fund the
 1307 county's participation in the public guardianship program under
 1308 chapter 744. Imposition of this surcharge must be by vote of
 1309 two-thirds of the board of county commissioners or after a
 1310 referendum approved by the electors of the county. Before
 1311 imposing the surcharge, the county commission must demonstrate
 1312 that available revenue sources are insufficient to fund such
 1313 participation. The court may not waive this surcharge.

1314
 1315 A county may not impose ~~both~~ of the surcharges authorized under
 1316 both paragraphs (a) and (b) concurrently.

1317 Section 35. Section 938.065, Florida Statutes, is created
 1318 to read:

1319 938.065 Additional cost for public guardianship
 1320 programs.--

1321 (1) In addition to any fine prescribed by law for any
 1322 misdemeanor offense, there is assessed as a court cost an
 1323 additional surcharge of \$18 on each fine, which shall be imposed
 1324 by each county and circuit court and collected by the clerk of
 1325 the court together with the fine.

1326 (2) The clerk of the court shall collect and forward, on a
 1327 monthly basis, all costs assessed under this section, less \$3
 1328 per assessment as a service charge to be retained by the clerk,
 1329 to the Department of Revenue for deposit into the General

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1330 | Revenue Fund. The funds collected shall be used exclusively to
1331 | fund public guardianship programs in this state.

1332 | Section 36. This act shall take effect July 1, 2005.