

By the Committee on Judiciary; and Senators Saunders and Fasano

590-2036-05

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

1 744.304, F.S.; specifying the persons who may
2 file a petition for a standby guardian;
3 requiring that notice of the appointment
4 hearing be served on the ward's next of kin;
5 clarifying when a standby guardian may assume
6 the duties of guardian; requiring that each
7 standby guardian submit to credit and criminal
8 background checks; amending s. 744.3115, F.S.;
9 providing a cross-reference; amending s.
10 744.3135, F.S.; providing procedures for
11 completing a guardians' criminal background
12 investigation; authorizing a guardian to use
13 inkless electronic fingerprinting equipment
14 that is available for background investigations
15 of public employees; providing that a guardian
16 need not be rescreened if he or she uses
17 certain inkless electronic fingerprinting
18 equipment; requiring the Department of Law
19 Enforcement to retain electronically submitted
20 fingerprints and to enter them into the
21 statewide automated fingerprint identification
22 system; requiring the department to search all
23 fingerprint cards received from each guardian
24 and each employee of such guardian against
25 fingerprints retained in the statewide
26 automated fingerprint identification system;
27 requiring a guardian to pay an annual fee to
28 the clerk of court for the background
29 investigation; requiring a guardian and each
30 employee of such guardian to complete an
31 investigation of his or her credit history;

1 requiring the Statewide Public Guardianship
2 Office to adopt a rule for credit
3 investigations of guardians; authorizing the
4 office to inspect the results of any criminal
5 or credit investigation; amending s. 744.3145,
6 F.S.; reducing the time in which a guardian
7 must complete the education courses from 1 year
8 to 4 months; amending s. 744.3215, F.S.;
9 providing that an incapacitated person retains
10 the right to receive necessary services and
11 rehabilitation necessary to maximize the
12 quality of the person's life; amending s.
13 744.331, F.S.; requiring that the court appoint
14 an attorney from a specified registry;
15 requiring attorneys to complete certain
16 training programs; providing that a member of
17 the examining committee may not be related to
18 or associated with certain persons; prohibiting
19 a person who served on an examining committee
20 from being appointed as the guardian; requiring
21 each member of an examining committee to file
22 an affidavit stating that he or she has
23 completed the mandatory training; providing for
24 training programs; requiring each member to
25 report the time and date that he or she
26 examined the person alleged to be
27 incapacitated; providing for an award of
28 attorney's fees; amending s. 744.341, F.S.;
29 requiring the voluntary guardian to include
30 certain information in the annual report;
31 requiring that certain specified information be

1 included in the notice to terminate a voluntary
2 guardianship; amending s. 744.361, F.S.;
3 requiring a professional guardian to ensure
4 that each of his or her wards is personally
5 visited at least quarterly; providing for the
6 assessment of certain conditions during the
7 personal visit; amending s. 744.365, F.S.;
8 requiring that the verified inventory include
9 information on any trust to which a ward is a
10 beneficiary; amending s. 744.367, F.S.;
11 requiring that the annual report of the
12 guardian be filed on or before April 1 of each
13 year; amending s. 744.3675, F.S.; requiring
14 that the annual guardianship plan include
15 information on the mental condition of the
16 ward; providing for an annual guardianship plan
17 for wards who are minors; amending s. 744.3678,
18 F.S.; providing that property of the ward which
19 is not under the control of the guardian,
20 including certain trusts, is not subject to
21 annual accounting; requiring certain
22 documentation for the annual accounting;
23 amending s. 744.3679, F.S.; removing a
24 provision prohibiting the clerk of court from
25 having responsibility for monitoring or
26 auditing accounts in certain cases; amending s.
27 744.368, F.S.; requiring that the verified
28 inventory and the accountings be audited within
29 a specified time period; amending s. 744.441,
30 F.S.; requiring the court to retain oversight
31 for assets of a ward transferred to a trust;

1 creating s. 744.442, F.S.; providing that a
2 guardian may designate a surrogate guardian to
3 exercise the powers of the guardian if the
4 guardian is unavailable to act; requiring the
5 surrogate guardian to be a professional
6 guardian; providing the procedures to be used
7 in appointing a surrogate guardian; providing
8 the duties of a surrogate guardian; requiring
9 the guardian to be liable for the acts of the
10 surrogate guardian; authorizing the guardian to
11 terminate the services of the surrogate
12 guardian by filing a written notice of the
13 termination with the court; amending s.
14 744.464, F.S.; removing the state attorney from
15 the list of persons to be served a notice of a
16 hearing on restoration of capacity; removing a
17 time limitation on the filing of a suggestion
18 of capacity; amending s. 744.474, F.S.;
19 revising the circumstances under which a
20 guardian may be removed; amending s. 744.511,
21 F.S.; providing that a ward who is a minor need
22 not be served with the final report of a
23 removed guardian; amending s. 744.527, F.S.;
24 providing that final reports for a deceased
25 ward be filed at a specified time; amending s.
26 744.528, F.S.; providing for a notice of the
27 hearing for objections to a report filed by a
28 guardian; amending s. 744.708, F.S.; requiring
29 a public guardian to ensure that each of his or
30 her wards is personally visited at least
31 quarterly; providing for the assessment of

1 certain conditions during the personal visit;
2 amending s. 765.101, F.S.; redefining the term
3 "health care decision" to include informed
4 consent for mental health treatment services;
5 amending s. 28.345, F.S.; exempting a public
6 guardian from paying court-related fees and
7 charges; amending ss. 121.091, 709.08, and
8 744.1085, F.S.; conforming cross-references;
9 reenacting s. 117.107(4), F.S., relating to
10 prohibited acts of a notary public, to
11 incorporate the amendment made to s. 744.3215,
12 F.S., in a reference thereto; providing an
13 effective date.
14

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

17 Section 1. Section 744.102, Florida Statutes, is
18 amended to read:

19 744.102 Definitions.--As used in this chapter, the
20 term:

21 (1) "Attorney for the alleged incapacitated person"
22 means an attorney who represents the alleged incapacitated
23 person. ~~The~~ ~~Such~~ attorney shall represent the expressed wishes
24 of the alleged incapacitated person to the extent it is
25 consistent with the rules regulating The Florida Bar.

26 (2) "Audit" means a systematic review of financial
27 documents with adherence to generally accepted auditing
28 standards.

29 ~~(3)(2)~~ "Clerk" means the clerk or deputy clerk of the
30 court.
31

1 ~~(4)(3)~~ "Corporate guardian" means a corporation
2 authorized to exercise fiduciary or guardianship powers in
3 this state and includes a nonprofit corporate guardian.

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

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

8 ~~(7)(6)~~ "Estate" means the property of a ward subject
9 to administration.

10 ~~(8)(7)~~ "Foreign guardian" means a guardian appointed
11 in another state or country.

12 ~~(9)(8)~~ "Guardian" means a person who has been
13 appointed by the court to act on behalf of a ward's person or
14 property, or both.

15 (a) "Limited guardian" means a guardian who has been
16 appointed by the court to exercise the legal rights and powers
17 specifically designated by court order entered after the court
18 has found that the ward lacks the capacity to do some, but not
19 all, of the tasks necessary to care for his or her person or
20 property, or after the person has voluntarily petitioned for
21 appointment of a limited guardian.

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

27 ~~(10)(9)~~ "Guardian ad litem" means a person who is
28 appointed by the court having jurisdiction of the guardianship
29 or a court in which a particular legal matter is pending to
30 represent a ward in that proceeding.

31

1 ~~(11)~~~~(10)~~ "Guardian advocate" means a person appointed
2 by a written order of the court to represent a person with
3 developmental disabilities under s. 393.12. As used in this
4 chapter, the term does not apply to a guardian advocate
5 appointed for a person determined incompetent to consent to
6 treatment under s. 394.4598.

7 ~~(12)~~~~(11)~~ "Incapacitated person" means a person who has
8 been judicially determined to lack the capacity to manage at
9 least some of the property or to meet at least some of the
10 essential health and safety requirements of the ~~such~~ person.

11 (a) To "manage property" means to take those actions
12 necessary to obtain, administer, and dispose of real and
13 personal property, intangible property, business property,
14 benefits, and income.

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

20 ~~(13)~~~~(12)~~ "Minor" means a person under 18 years of age
21 whose disabilities have not been removed by marriage or
22 otherwise.

23 ~~(14)~~~~(13)~~ "Next of kin" means those persons who would
24 be heirs at law of the ward or alleged incapacitated person if
25 the ~~such~~ person were deceased and includes the lineal
26 descendants of the ~~such~~ ward or alleged incapacitated person.

27 ~~(15)~~~~(14)~~ "Nonprofit corporate guardian" means a
28 nonprofit corporation organized for religious or charitable
29 purposes and existing under the laws of this state.

30
31

1 ~~(16)~~~~(15)~~ "Preneed guardian" means a person named in a
2 written declaration to serve as guardian in the event of the
3 incapacity of the declarant as provided in s. 744.3045.

4 ~~(17)~~~~(16)~~ "Professional guardian" means any guardian
5 who ~~receives or~~ has at any time ~~received compensation for~~
6 ~~services~~ rendered services to three or more ~~than two~~ wards as
7 their guardian. A person serving as a guardian for two or more
8 relatives as defined in s. 744.309(2) is not considered a
9 professional guardian. A public guardian shall be considered a
10 professional guardian for purposes of regulation, education,
11 and registration.

12 ~~(18)~~~~(17)~~ "Property" means both real and personal
13 property or any interest in it and anything that may be the
14 subject of ownership.

15 ~~(19)~~~~(18)~~ "Standby guardian" means a person empowered
16 to assume the duties of guardianship upon the death or
17 adjudication of incapacity of the last surviving natural or
18 appointed guardian.

19 ~~(20)~~ "Surrogate guardian" means a guardian designated
20 according to s. 744.442.

21 ~~(21)~~~~(19)~~ "Totally incapacitated" means incapable of
22 exercising any of the rights enumerated in s. 744.3215(2) and
23 (3).

24 ~~(22)~~~~(20)~~ "Ward" means a person for whom a guardian has
25 been appointed.

26 Section 2. Subsections (5) and (10) of section
27 744.1083, Florida Statutes, are amended to read:

28 744.1083 Professional guardian registration.--

29 (5) The executive director of the office may deny
30 registration to a professional guardian if the executive
31 director determines that the guardian's proposed registration,

1 including the guardian's credit or criminal investigations,
2 indicates that registering the professional guardian would
3 violate any provision of this chapter. If a guardian who is
4 currently registered with the office violates a provision of
5 this chapter, the executive director of the office may suspend
6 or revoke the guardian's registration. If the executive
7 director denies registration to a professional guardian or
8 suspends or revokes a professional guardian's registration,
9 the Statewide Public Guardianship Office must send written
10 notification of the denial, suspension, or revocation to the
11 chief judge of each judicial circuit in which the guardian was
12 serving on the day of the office's decision to deny, suspend,
13 or revoke the registration.

14 (10) A state college or university or an independent
15 college or university described in s. 1009.98(3)(a), may, but
16 is not required to, register as a professional guardian under
17 this section. If a state college or university or independent
18 college or university elects to register as a professional
19 guardian under this subsection, the requirements of
20 subsections (3) and (4) ~~subsection (3)~~ do not apply and the
21 registration must include only the name, address, and employer
22 identification number of the registrant.

23 Section 3. Section 744.301, Florida Statutes, is
24 amended to read:

25 744.301 Natural guardians.--

26 (1) The mother and father jointly are natural
27 guardians of their own children and of their adopted children,
28 during minority. If one parent dies, the surviving parent
29 remains the sole natural guardian even if he or she the
30 ~~natural guardianship shall pass to the surviving parent, and~~
31 ~~the right shall continue even though the surviving parent~~

1 remarries. If the marriage between the parents is dissolved,
2 the natural guardianship belongs ~~shall belong~~ to the parent to
3 whom ~~the~~ custody of the child is awarded. If the parents are
4 given joint custody, then both ~~shall~~ continue as natural
5 guardians. If the marriage is dissolved and neither the
6 father nor the mother is given custody of the child, neither
7 shall act as natural guardian of the child. The mother of a
8 child born out of wedlock is the natural guardian of the child
9 and is entitled to primary residential care and custody of the
10 child unless a court of competent jurisdiction enters an order
11 stating otherwise.

12 (2) ~~The~~ Natural ~~guardian or~~ guardians are authorized,
13 on behalf of any of their minor children, to settle and
14 consummate a settlement of any claim or cause of action
15 accruing to any of their minor children for damages to the
16 person or property of any of said minor children and to
17 collect, receive, and manage, and dispose of the proceeds of
18 any such settlement and ~~of any other~~ real or personal property
19 distributed from an estate or trust or proceeds from a life
20 insurance policy to, or otherwise accruing to the benefit of,
21 the child during minority, when the amounts received, in the
22 aggregate, do amount involved in any instance does not exceed
23 \$15,000, without appointment, authority, or bond.

24 (3) All instruments executed by a natural guardian for
25 the benefit of the ward under the powers specified provided
26 ~~for~~ in subsection (2) shall be binding on the ward. The
27 natural guardian may not, without a court order, use the
28 property of the ward for the guardian's benefit or to satisfy
29 the guardian's support obligation to the ward.

30 (4)(a) ~~In any case where a minor has a claim for~~
31 ~~personal injury, property damage, or wrongful death in which~~

1 ~~the gross settlement for the claim of the minor exceeds~~
2 ~~\$15,000, the court may, prior to the approval of the~~
3 ~~settlement of the minor's claim, appoint a guardian ad litem~~
4 ~~to represent the minor's interests. In any case in which the~~
5 ~~gross settlement involving a minor equals or exceeds \$25,000,~~
6 ~~the court shall, prior to the approval of the settlement of~~
7 ~~the minor's claim, appoint a guardian ad litem to represent~~
8 ~~the minor's interests. The appointment of the guardian ad~~
9 ~~litem must be without the necessity of bond or a notice. The~~
10 ~~duty of the guardian ad litem is to protect the minor's~~
11 ~~interests. The procedure for carrying out that duty is as~~
12 ~~prescribed in the Florida Probate Rules. If a legal guardian~~
13 ~~of the minor has previously been appointed and has no~~
14 ~~potential adverse interest to the minor, the court may not~~
15 ~~appoint a guardian ad litem to represent the minor's~~
16 ~~interests, unless the court determines that the appointment is~~
17 ~~otherwise necessary.~~

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

21 Section 4. Section 744.3025, Florida Statutes, is
22 created to read:

23 744.3025 Claims of minors.--

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

30 (b) The court shall appoint a guardian ad litem to
31 represent the minor's interest before approving a settlement

1 of the minor's claim, in any case in which the gross
2 settlement involving a minor equals or exceeds \$50,000.

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

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

8 (e) A court need not appoint a guardian ad litem for
9 the child if a guardian of the minor has previously been
10 appointed and that guardian has no potential adverse interest
11 to the minor. A court may appoint a guardian ad litem if the
12 court believes a guardian ad litem is necessary to protect the
13 interests of the minor.

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

17 Section 5. Subsection (3) of section 744.3031, Florida
18 Statutes, is amended, and subsection (8) is added to that
19 section, to read:

20 744.3031 Emergency temporary guardianship.--

21 (3) The authority of an emergency temporary guardian
22 expires 90 ~~60~~ days after the date of appointment or when a
23 guardian is appointed, whichever occurs first. The authority
24 of the emergency temporary guardian may be extended for an
25 additional 90 ~~30~~ days upon a showing that the emergency
26 conditions still exist.

27 (8)(a) An emergency temporary guardian shall file a
28 final report no later than 30 days after the expiration of the
29 emergency temporary guardianship.

30 (b) An emergency temporary guardianship is a guardian
31 for the property. The final report must consist of a verified

1 inventory of the property, as provided in s. 744.365, as of
2 the date the letters of emergency temporary guardianship were
3 issued, a final accounting that gives a full and correct
4 account of the receipts and disbursements of all the property
5 of the ward over which the guardian had control, and a
6 statement of the property of the ward on hand at the end of
7 the emergency temporary guardianship. If the emergency
8 temporary guardian becomes the successor guardian of the
9 property, the final report must satisfy the requirements of
10 the initial guardianship report for the guardian of the
11 property as provided in s. 744.362.

12 (c) If the emergency temporary guardian is a guardian
13 of the person, the final report must summarize the activities
14 of the temporary guardian with regard to residential
15 placement, medical condition, mental health and rehabilitative
16 services, and the social condition of the ward to the extent
17 of the authority granted to the temporary guardian in the
18 letters of guardianship. If the emergency temporary guardian
19 becomes the successor guardian of the person, the report must
20 satisfy the requirements of the initial report for a guardian
21 of the person as stated in s. 744.362.

22 (d) A copy of the final report of the emergency
23 temporary guardianship shall be served on the successor
24 guardian and the ward.

25 Section 6. Section 744.304, Florida Statutes, is
26 amended to read:

27 744.304 Standby guardianship.--

28 (1) Upon a petition by the natural guardians or a
29 guardian appointed under s. 744.3021, the court may appoint a
30 standby guardian of the person or property of a minor ~~or~~
31 ~~consent of both parents, natural or adoptive, if living, or of~~

1 ~~the surviving parent, a standby guardian of the person or~~
2 ~~property of a minor may be appointed by the court.~~ The court
3 may also appoint an alternate to the guardian to act if the
4 standby guardian does not serve or ceases to serve after
5 appointment. Notice of a hearing on the petition must be
6 served on the parents, natural or adoptive, and on any
7 guardian currently serving unless the notice is waived in
8 writing by them or waived by the court for good cause shown
9 ~~shall renounce, die, or become incapacitated after the death~~
10 ~~of the last surviving parent of the minor.~~

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

15 (3) The standby guardian or alternate shall be
16 empowered to assume the duties of guardianship ~~his or her~~
17 ~~office~~ immediately on the death, removal, or resignation of
18 the guardian of a minor, or on the death or adjudication of
19 incapacity of the last surviving natural guardian ~~or adoptive~~
20 ~~parent~~ of a minor, or upon the death, removal, or resignation
21 of the guardian for an adult. ~~The; however, such a~~ guardian of
22 the ward's property may not be empowered to deal with the
23 ward's property, other than to safeguard it, before ~~prior to~~
24 issuance of letters of guardianship. If the ward
25 ~~incapacitated person~~ is over the age of 18 years, the court
26 shall conduct a hearing as provided in s. 744.331 before
27 confirming the appointment of the standby guardian, unless the
28 ward has previously been found to be incapacitated.

29 (4) Within 20 days after assumption of duties as
30 guardian, a standby guardian shall petition for confirmation
31 of appointment. If the court finds the standby guardian to be

1 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309
2 and 744.312, appointment of the guardian must be confirmed.
3 Each guardian so confirmed shall file an oath in accordance
4 with s. 744.347, ~~and~~ shall file a bond and submit to a credit
5 and criminal investigation as set forth in s. 744.3135, if
6 required. Letters of guardianship must then be issued in the
7 manner provided in s. 744.345.

8 (5) After the assumption of duties by a standby
9 guardian, the court shall have jurisdiction over the guardian
10 and the ward.

11 Section 7. Section 744.3115, Florida Statutes, is
12 amended to read:

13 744.3115 Advance directives for health care.--In each
14 proceeding in which a guardian is appointed under this
15 chapter, the court shall determine whether the ward, prior to
16 incapacity, has executed any valid advance directive under
17 ~~pursuant to~~ chapter 765. If any ~~such~~ advance directive exists,
18 the court shall specify in its order and letters of
19 guardianship what authority, if any, the guardian shall
20 exercise over the surrogate. Pursuant to the grounds listed in
21 s. 765.105, the court, upon its own motion, may, with notice
22 to the surrogate and any other appropriate parties, modify or
23 revoke the authority of the surrogate to make health care
24 decisions for the ward. For purposes of this section, the term
25 "health care decision" has the same meaning as in s. 765.101.

26 Section 8. Section 744.3135, Florida Statutes, is
27 amended to read:

28 744.3135 Credit and criminal investigation.--

29 (1) The court may require a nonprofessional guardian
30 and shall require a professional or public guardian, and all
31 employees of a professional guardian who have a fiduciary

1 responsibility to a ward, to submit, at their own expense, to
2 an investigation of the guardian's credit history and to
3 undergo level 2 background screening as required under s.
4 435.04. If a credit or criminal investigation is required, the
5 court must consider the results of any investigation before
6 appointing a guardian. At any time, the court may require a
7 guardian or its employees to submit to an investigation of the
8 person's credit history and complete a level 1 background
9 screening as set forth in s. 435.03. The court shall consider
10 the results of any investigation when reappointing a guardian.
11 The clerk of the court shall maintain a file on each guardian
12 appointed by the court and retain documentation of the result
13 of any investigation conducted under this section in the file.
14 A professional guardian must pay the clerk of the court a fee
15 of up to \$7.50 for handling and processing professional
16 guardian files.

17 (2) The court and the Statewide Public Guardianship
18 Office shall accept the satisfactory completion of a criminal
19 background investigation by any method described in this
20 subsection. A guardian satisfies the requirements of this
21 section by undergoing:

22 (a) An inkless electronic fingerprint criminal
23 background investigation. A guardian may use any inkless
24 electronic fingerprinting equipment used for criminal
25 background investigations of public employees. The guardian
26 shall pay the actual costs incurred by the Federal Bureau of
27 Investigation or the Department of Law Enforcement for the
28 criminal background investigation. The agency that operates
29 the equipment used by the guardian may charge the guardian an
30 additional fee, not to exceed \$10, for the use of the
31 equipment. The agency completing the investigation must

1 immediately send the results of the criminal background
2 investigation to the clerk of the court and the Statewide
3 Public Guardianship Office. The clerk of the court shall
4 maintain the results in the guardian's file and shall make the
5 results available to the court; or

6 (b) A criminal background investigation using a
7 fingerprint card. The clerk of the court shall obtain
8 fingerprint cards from the Federal Bureau of Investigation and
9 make them available to guardians. Any guardian who is so
10 required shall have his or her fingerprints taken and forward
11 the proper fingerprint card along with the necessary fee to
12 the Florida Department of Law Enforcement for processing. ~~The~~
13 ~~professional guardian shall pay to the clerk of the court a~~
14 ~~fee of up to \$7.50 for handling and processing professional~~
15 ~~guardian files.~~ The results of the fingerprint card background
16 investigations checks shall be forwarded to the clerk of the
17 court who shall maintain the results in the guardian's a
18 ~~guardian~~ file and ~~shall~~ make the results available to the
19 court and the Statewide Public Guardianship Office. If credit
20 ~~or criminal investigations are required, the court must~~
21 ~~consider the results of the investigations before appointing a~~
22 ~~guardian. Professional guardians and all employees of a~~
23 ~~professional guardian who have a fiduciary responsibility to a~~
24 ~~ward, so appointed, must resubmit, at their own expense, to an~~
25 ~~investigation of credit history, and undergo level 1~~
26 ~~background screening as required under s. 435.03, at least~~
27 ~~every 2 years after the date of their appointment. At any~~
28 ~~time, the court may require guardians or their employees to~~
29 ~~submit to an investigation of credit history and undergo level~~
30 ~~1 background screening as required under s. 435.03. The court~~

1 ~~must consider the results of these investigations in~~
2 ~~reappointing a guardian.~~

3 (3)(a) A professional guardian, and each employee of a
4 professional guardian who has a fiduciary responsibility to a
5 ward, must complete, at his or her own expense, a level 2
6 background screening as set forth in s. 435.04, before and at
7 least once every 5 years after the date the guardian is
8 appointed. A professional guardian, and each employee of a
9 professional guardian who has a fiduciary responsibility to a
10 ward, must complete, at his or her own expense, a level 1
11 background screening as set forth in s. 435.03, at least once
12 every 2 years after the date the guardian is appointed.
13 However, a person is not required to resubmit fingerprints for
14 a criminal background investigation if he or she has been
15 screened using inkless electronic fingerprinting equipment
16 that is capable of notifying the clerk of the court of any
17 crime charged against the person in the State of Florida or
18 elsewhere as appropriate.

19 (b) Effective December 15, 2005, all fingerprints
20 electronically submitted to the Department of Law Enforcement
21 under this section shall be retained by the Department of Law
22 Enforcement in a manner provided by rule and entered in the
23 statewide automated fingerprint identification system
24 authorized by s. 943.05(2)(b). The fingerprints shall
25 thereafter be available for all purposes and uses authorized
26 for arrest fingerprint cards entered in the statewide
27 automated fingerprint identification system under s. 943.051.

28 (c) Effective December 15, 2005, the Department of Law
29 Enforcement shall search all arrest fingerprint cards received
30 under s. 943.051 against the fingerprints retained in the
31 statewide automated fingerprint identification system under

1 paragraph (b). Any arrest record that is identified with the
2 fingerprints of a person described in this paragraph must be
3 reported as soon as possible to the clerk of court. The clerk
4 of court must forward any arrest record received for a
5 professional guardian to the Statewide Public Guardianship
6 Office within 5 days. Each guardian who elects to undergo an
7 inkless electronic background investigation shall participate
8 in this search process by paying an annual fee to the clerk of
9 court and by informing the clerk of court of any change in the
10 status of his or her guardianship appointment. The amount of
11 the annual fee to be imposed upon each clerk of court for
12 performing these searches and the procedures for the retention
13 of guardian fingerprints and the dissemination of search
14 results shall be established by rule of the Department of Law
15 Enforcement. The fee may be borne by the clerk of court or the
16 guardian, but may not exceed \$10.

17 (4)(a) A professional guardian, and each employee of a
18 professional guardian who has a fiduciary responsibility to a
19 ward, must complete, at the person's own expense, an
20 investigation of the credit history of the person before and
21 at least once every 2 years after the date of the guardian's
22 appointment.

23 (b) The Statewide Public Guardianship Office shall
24 adopt a rule detailing the acceptable methods for completing a
25 credit investigation under this section. If appropriate, the
26 Statewide Public Guardianship Office may administer credit
27 investigations. If the office chooses to administer the credit
28 investigation, the office may adopt a rule setting a fee, not
29 to exceed \$25, to reimburse the costs associated with the
30 administration of a credit investigation.

31

1 (5) The Statewide Public Guardianship Office may
2 inspect at any time the results of any credit or criminal
3 investigation of a public or professional guardian conducted
4 under this section. The office shall maintain copies of the
5 credit or criminal results in the guardian's registration
6 file. If the results of a credit or criminal investigation of
7 a public or professional guardian have not been forwarded to
8 the Statewide Public Guardianship Office by the investigating
9 agency, the clerk of the court shall forward copies of the
10 results of the investigations to the office upon receiving
11 them.

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

17 (6)(2) The requirements of this section do does not
18 apply to a professional guardian, or to the employees of a
19 professional guardian, which is a trust company, a state
20 banking corporation or state savings association authorized
21 and qualified to exercise fiduciary powers in this state, or a
22 national banking association or federal savings and loan
23 association authorized and qualified to exercise fiduciary
24 powers in this state.

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

27 744.3145 Guardian education requirements.--

28 (4) Each person appointed by the court to be a
29 guardian must complete the required number of hours of
30 instruction and education within 4 months ~~1 year~~ after his or
31 her appointment as guardian. The instruction and education

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

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

10 744.3215 Rights of persons determined incapacitated.--

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

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

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

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

21 (b) To vote.

22 (c) To personally apply for government benefits.

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

24 (e) To travel.

25 (f) To seek or retain employment.

26 Section 11. Subsections (2), (3), and (7) of section
27 744.331, Florida Statutes, are amended to read:

28 744.331 Procedures to determine incapacity.--

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

30 (a) When a court appoints an attorney for an alleged
31 incapacitated person, the court must appoint an attorney who

1 is included in the attorney registry compiled by the circuit's
2 Article V indigent services committee. Appointments must be
3 made on a rotating basis, taking into consideration conflicts
4 arising under this chapter.

5 ~~(b)(a)~~ The court shall appoint an attorney for each
6 person alleged to be incapacitated in all cases involving a
7 petition for adjudication of incapacity. The alleged
8 incapacitated person may substitute her or his own attorney
9 for the attorney appointed by the court, subject to court
10 approval.

11 ~~(c)(b)~~ Any attorney representing an alleged
12 incapacitated person may not serve as guardian of the alleged
13 incapacitated person or as counsel for the guardian of the
14 alleged incapacitated person or the petitioner.

15 (d) Effective January 1, 2006, an attorney seeking to
16 be appointed by a court for incapacity and guardianship
17 proceedings must have completed a minimum of 8 hours of
18 education in guardianship. A court may waive the initial
19 training requirement for an attorney who has served as a
20 court-appointed attorney in incapacity proceedings or as an
21 attorney of record for guardians for not less than 3 years.

22 (3) EXAMINING COMMITTEE.--

23 (a) Within 5 days after a petition for determination
24 of incapacity has been filed, the court shall appoint an
25 examining committee consisting of three members. One member
26 must be a psychiatrist or other physician. The remaining
27 members must be either a psychologist, gerontologist, another
28 psychiatrist, or other physician, a registered nurse, nurse
29 practitioner, licensed social worker, a person with an
30 advanced degree in gerontology from an accredited institution
31 of higher education, or other person who by knowledge, skill,

1 | experience, training, or education may, in the court's
2 | discretion, advise the court in the form of an expert opinion,
3 | including a professional guardian. One of three members of the
4 | committee must have knowledge of the type of incapacity
5 | alleged in the petition. Unless good cause is shown, the
6 | attending or family physician may not be appointed to the
7 | committee. If the attending or family physician is available
8 | for consultation, the committee must consult with the
9 | physician. Members of the examining committee may not be
10 | related to or associated with one another, ~~or~~ with the
11 | petitioner, with counsel for the petitioner or the proposed
12 | guardian, or the person alleged to be totally or partially
13 | incapacitated. A member may not be employed by any private or
14 | governmental agency that has custody of, or furnishes,
15 | services or subsidies, directly or indirectly, to the person
16 | or the family of the person alleged to be incapacitated or for
17 | whom a guardianship is sought. A petitioner may not serve as
18 | a member of the examining committee. Members of the examining
19 | committee must be able to communicate, either directly or
20 | through an interpreter, in the language that the alleged
21 | incapacitated person speaks or to communicate in a medium
22 | understandable to the alleged incapacitated person if she or
23 | he is able to communicate. The clerk of the court shall send
24 | notice of the appointment to each person appointed no later
25 | than 3 days after the court's appointment.

26 | (b) A person who has been appointed to serve as a
27 | member of an examining committee to examine an alleged
28 | incapacitated person may not thereafter be appointed as a
29 | guardian for the person who was the subject of the
30 | examination.

31 |

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

7 (d) A member of an examining committee must complete a
8 minimum of 4 hours of initial training. The person must
9 complete 2 hours of continuing education during each 2-year
10 period after the initial training. The initial training and
11 continuing education program must be developed under the
12 supervision of the Statewide Public Guardianship Office, in
13 consultation with the Florida Conference of Circuit Court
14 Judges, the Elder Law and Real Property, Probate and Trust Law
15 sections of The Florida Bar, the Florida State Guardianship
16 Association, and the Florida Guardianship Foundation. The
17 court may waive the initial training requirement for a person
18 who has served for not less than 5 years on examining
19 committees. If a person wishes to obtain his or her continuing
20 education on the Internet or by watching a video course, the
21 person must first obtain the approval of the chief judge
22 before taking an Internet or video course.

23 (e)(b) Each member of the examining committee shall
24 examine the person. Each ~~The~~ examining committee member must
25 ~~shall~~ determine the alleged incapacitated person's ability to
26 exercise those rights specified in s. 744.3215. In addition to
27 the examination, each ~~the~~ examining committee member must
28 ~~shall~~ have access to, and may consider, previous examinations
29 of the person, including, but not limited to, habilitation
30 plans, school records, and psychological and psychosocial
31 reports voluntarily offered for use by the alleged

1 incapacitated person. Each member of the examining committee
2 ~~must shall~~ submit a report within 15 days after appointment.

3 ~~(f)(e)~~ The examination of the alleged incapacitated
4 person must include a comprehensive examination, a report of
5 which shall be filed by the examining committee as part of its
6 written report. The comprehensive examination report should be
7 an essential element, but not necessarily the only element,
8 used in making a capacity and guardianship decision. The
9 comprehensive examination must include, if indicated:

- 10 1. A physical examination;
- 11 2. A mental health examination; and
- 12 3. A functional assessment.

13

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

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

18 1. To the extent possible, a diagnosis, prognosis, and
19 recommended course of treatment.

20 2. An evaluation of the alleged incapacitated person's
21 ability to retain her or his rights, including, without
22 limitation, the rights to marry; vote; contract; manage or
23 dispose of property; have a driver's license; determine her or
24 his residence; consent to medical treatment; and make
25 decisions affecting her or his social environment.

26 3. The results of the comprehensive examination and
27 the committee members' assessment of information provided by
28 the attending or family physician, if any.

29 4. A description of any matters with respect to which
30 the person lacks the capacity to exercise rights, the extent
31

1 of that incapacity, and the factual basis for the
2 determination that the person lacks that capacity.

3 5. The names of all persons present during the time
4 the committee member conducted his or her examination. If a
5 person other than the person who is the subject of the
6 examination supplies answers posed to the alleged
7 incapacitated person, the report must include the response and
8 the name of the person supplying the answer.

9 ~~6.5-~~ The signature of each member of the committee and
10 the date and time each member conducted his or her
11 examination.

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

16 (7) FEES.--

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

20 (b) The fees awarded under paragraph (a) shall be paid
21 by the guardian from the property of the ward or, if the ward
22 is indigent, by the state. The state shall have a creditor's
23 claim against the guardianship property for any amounts paid
24 under this section. The state may file its claim within 90
25 days after the entry of an order awarding attorney ad litem
26 fees. If the state does not file its claim within the 90-day
27 period, the state is thereafter barred from asserting the
28 claim. Upon petition by the state for payment of the claim,
29 the court shall enter an order authorizing immediate payment
30 out of the property of the ward. The state shall keep a record
31 of the ~~such~~ payments.

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

5 Section 12. Present subsection (4) of section 744.341,
6 Florida Statutes, is redesignated as subsection (5) and
7 amended, and a new subsection (4) is added to that section, to
8 read:

9 744.341 Voluntary guardianship.--

10 (4) A guardian must include in the annual report filed
11 with the court a certificate from a licensed physician who
12 examined the ward not more than 90 days before the annual
13 report is filed with the court. The certificate must certify
14 that the ward is competent to understand the nature of the
15 guardianship and of the ward's authority to delegate powers to
16 the voluntary guardian.

17 ~~(5)(4)~~ A voluntary guardianship may be terminated by
18 the ward by filing a notice with the court that the voluntary
19 guardianship is terminated. The notice must be accompanied by
20 a certificate from a licensed physician who has examined the
21 ward not more than 30 days before the ward filed the notice
22 with the court. The physician must certify that the ward is
23 competent to understand the implications of terminating the
24 guardianship. A copy of the notice and certificate must be
25 served on all interested persons.

26 Section 13. Subsection (9) is added to section
27 774.361, Florida Statutes, to read:

28 744.361 Powers and duties of guardian.--

29 (9) A professional guardian must ensure that each of
30 the guardian's wards is personally visited by the guardian or
31 one of the guardian's professional staff at least once each

1 calendar quarter. During the personal visit, the guardian or
2 the guardian's professional staff person shall assess:

3 (a) The ward's physical appearance and condition;

4 (b) The appropriateness of the ward's current living
5 situation; and

6 (c) The need for any additional services and the
7 necessity for continuation of existing services, taking into
8 consideration all aspects of social, psychological,
9 educational, direct service, health, and personal care needs.

10
11 This subsection does not apply to a professional guardian who
12 has been appointed only as guardian of the property.

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

15 744.365 Verified inventory.--

16 (2) CONTENTS.--The verified inventory must include the
17 following:

18 (a) All property of the ward, real and personal, that
19 has come into the guardian's possession or knowledge,
20 including a statement of all encumbrances, liens, and other
21 secured claims on any item, any claims against the property,
22 and any cause of action accruing to the ward and any trusts of
23 which the ward is a beneficiary;

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

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

29 Section 15. Subsections (1) and (3) of section
30 744.367, Florida Statutes, are amended to read:

31 744.367 Duty to file annual guardianship report.--

1 (1) Unless the court requires filing on a
2 calendar-year basis, each guardian of the person shall file
3 with the court an annual guardianship plan within 90 days
4 after the last day of the anniversary month the letters of
5 guardianship were signed, and the plan must cover the coming
6 fiscal year, ending on the last day in such anniversary month.
7 If the court requires calendar-year filing, the guardianship
8 plan must be filed on or before April 1 of each year ~~within 90~~
9 ~~days after the end of the calendar year.~~

10 (3) The annual guardianship report of a guardian of
11 the property must consist of an annual accounting, and the
12 annual report of a guardian of the person ~~of an incapacitated~~
13 ~~person~~ must consist of an annual guardianship plan. The annual
14 report shall be served on the ward, unless the ward is a minor
15 ~~under the age of 14 years~~ or is totally incapacitated, and on
16 the attorney for the ward, if any. The guardian shall provide
17 a copy to any other person as the court may direct.

18 Section 16. Section 744.3675, Florida Statutes, is
19 amended to read:

20 744.3675 Annual guardianship plan.--Each guardian of
21 the person must file with the court an annual guardianship
22 plan which updates information about the condition of the
23 ward. The annual plan must specify the current needs of the
24 ward and how those needs are proposed to be met in the coming
25 year.

26 (1) Each plan for an adult ward must, if applicable,
27 include:

28 (a) Information concerning the residence of the ward,
29 including:

30 1. The ward's address at the time of filing the plan;
31

1 2. The name and address of each place where the ward
2 was maintained during the preceding year;

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

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

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

9 (b) Information concerning the medical and mental
10 health conditions ~~condition~~ and treatment and rehabilitation
11 needs of the ward, including:

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

14 2. The report of a physician who examined the ward no
15 more than 90 days before the beginning of the applicable
16 reporting period. ~~The Such~~ report must contain an evaluation
17 of the ward's condition and a statement of the current level
18 of capacity of the ward; and

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

21 (c) Information concerning the social condition of the
22 ward, including:

23 1. The social and personal services currently used
24 ~~utilized~~ by the ward;

25 2. The social skills of the ward, including a
26 statement of how well the ward communicates and maintains
27 interpersonal relationships with others; and

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

30 ~~3.4.~~ The social needs of the ward.

31

1 (2) Each plan filed by the legal guardian of a minor
2 must include:
3 (a) Information concerning the residence of the minor,
4 including:
5 1. The minor's address at the time of filing the plan;
6 and
7 2. The name and address of each place where the minor
8 lived during the preceding year.
9 (b) Information concerning the medical and mental
10 health conditions and treatment and rehabilitation needs of
11 the minor, including:
12 1. A resume of any professional medical treatment
13 given to the minor during the preceding year;
14 2. A report from the physician who examined the minor
15 no more than 180 days before the beginning of the applicable
16 reporting period which contains an evaluation of the minor's
17 physical and mental conditions; and
18 3. The plan for providing medical services in the
19 coming year.
20 (c) Information concerning the education of the minor,
21 including:
22 1. A summary of the school progress report;
23 2. The social development of the minor, including a
24 statement of how well the minor communicates and maintains
25 interpersonal relationships with others; and
26 3. The social needs of the minor.
27 ~~(3)(2)~~ Each plan for an adult ward must address the
28 issue of restoration of rights to the ward and include:
29 (a) A summary of activities during the preceding year
30 which were designed to enhance ~~increase~~ the capacity of the
31 ward;

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

3 (c) A statement of whether restoration of any rights
4 will be sought.

5 ~~(4)(3)~~ The court, in its discretion, may require
6 reexamination of the ward by a physician at any time.

7 Section 17. Subsections (2) and (3) of section
8 744.3678, Florida Statutes, are amended to read:

9 744.3678 Annual accounting.--

10 (2) The annual accounting must include:

11 (a) A full and correct account of the receipts and
12 disbursements of all of the ward's property over which the
13 guardian has control and a statement of the ward's property on
14 hand at the end of the accounting period. This paragraph does
15 not apply to any property under the control of the guardian,
16 including any trust of which the ward is a beneficiary but
17 which is not under the control or administration of the
18 guardian.

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

22 (3) The guardian must obtain a receipt, ~~or~~ canceled
23 check, or other proof of payment for all expenditures and
24 disbursements made on behalf of the ward. The guardian must
25 preserve all evidence of payment ~~the receipts and canceled~~
26 ~~checks~~, along with other substantiating papers, for a period
27 of 3 years after his or her discharge. The receipts, proof of
28 payment ~~checks~~, and substantiating papers need not be filed
29 with the court but shall be made available for inspection and
30 review at the ~~such~~ time and ~~in such~~ place and before such
31 persons as the court may ~~from time to time~~ order.

1 Section 18. Section 744.3679, Florida Statutes, is
2 amended to read:

3 744.3679 Simplified accounting procedures in certain
4 cases.--

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

11 (a) The original or a certified copy of the year-end
12 statement of the ward's account from the financial
13 institution; and

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

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

19 ~~(2)(3)~~ (2) The accounting allowed by subsection (1) is in
20 lieu of the accounting and auditing procedures under s.
21 744.3678(2) ~~ss. 744.3678 and 744.368(1)(f)~~. However, any
22 interested party may seek judicial review as provided in s.
23 744.3685.

24 ~~(3)(4)~~ (3) The guardian need not be represented by an
25 attorney in order to file the annual accounting allowed by
26 subsection (1).

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

29 744.368 Responsibilities of the clerk of the circuit
30 court.--

31

1 (3) Within 90 days after the filing of the verified
2 inventory and accountings ~~initial or annual guardianship~~
3 ~~report~~ by a guardian of the property, the clerk shall audit
4 the verified inventory and ~~or~~ the accountings ~~annual~~
5 ~~accounting~~. The clerk shall advise the court of the results of
6 the audit.

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

9 744.441 Powers of guardian upon court approval.--After
10 obtaining approval of the court pursuant to a petition for
11 authorization to act, a plenary guardian of the property, or a
12 limited guardian of the property within the powers granted by
13 the order appointing the guardian or an approved annual or
14 amended guardianship report, may:

15 (19) Create or amend revocable or irrevocable trusts
16 of property of the ward's estate which may extend beyond the
17 disability or life of the ward in connection with estate,
18 gift, income, or other tax planning or in connection with
19 estate planning. The court shall retain oversight of the
20 assets transferred to a trust, unless otherwise ordered by the
21 court.

22 Section 21. Section 744.442, Florida Statutes, is
23 created to read:

24 744.442 Delegation of authority.--

25 (1) A guardian may designate a surrogate guardian to
26 exercise the powers of the guardian if the guardian is
27 unavailable to act. A person designated as a surrogate
28 guardian under this section must be a professional guardian.

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

31

1 (b) If the court approves the designation, the order
2 must specify the name and business address of the surrogate
3 guardian, and the duration of appointment, which may not
4 exceed 30 days. The court may extend the appointment for good
5 cause shown. The surrogate guardian may exercise all powers of
6 the guardian unless limited by order of the court. The
7 surrogate guardian must file with the court an oath swearing
8 or affirming that he or she will faithfully perform the duties
9 delegated. The court may require the surrogate guardian to
10 post a bond.

11 (3) This section does not limit the responsibility of
12 the guardian to the ward and to the court. The guardian is
13 liable for the acts of the surrogate guardian. The guardian
14 may terminate the authority of the surrogate guardian by
15 filing a written notice of the termination with the court.

16 (4) The surrogate guardian is subject to the
17 jurisdiction of the court as if appointed to serve as
18 guardian.

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

22 744.464 Restoration to capacity.--

23 (2) SUGGESTION OF CAPACITY.--

24 (c) The court shall immediately send notice of the
25 filing of the suggestion of capacity to the ward, the
26 guardian, the attorney for the ward, if any, ~~the state~~
27 ~~attorney,~~ and any other interested persons designated by the
28 court. Formal notice must be served on the guardian.
29 Informal notice may be served on other persons. Notice need
30 not be served on the person who filed the suggestion of
31 capacity.

1 (e) If an objection is timely filed, or if the medical
2 examination suggests that full restoration is not appropriate,
3 the court shall set the matter for hearing. If the ward does
4 not have an attorney, the court shall appoint one to represent
5 the ward.

6 (f) Notice of the hearing and copies of the objections
7 and medical examination reports shall be served upon the ward,
8 the ward's attorney, the guardian, ~~the state attorney,~~ the
9 ward's next of kin, and any other interested persons as
10 directed by the court.

11 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~
12 ~~CAPACITY. Notwithstanding this section, a suggestion of~~
13 ~~capacity may not be filed within 90 days after an adjudication~~
14 ~~of incapacity or denial of restoration, unless good cause is~~
15 ~~shown.~~

16 Section 23. Subsection (19) of section 744.474,
17 Florida Statutes, is amended to read:

18 744.474 Reasons for removal of guardian.--A guardian
19 may be removed for any of the following reasons, and the
20 removal shall be in addition to any other penalties prescribed
21 by law:

22 (19) Upon a showing by a person who did not receive
23 notice of the petition for adjudication of incapacity, when
24 such notice is required, or who is related to the ward within
25 the relationships specified for nonresident relatives in ss.
26 744.309(2) and 744.312(2) and who has not previously been
27 rejected by the court as a guardian that+

28 ~~(a) the current guardian is not a family member+~~ and
29 subsection (20) applies, the court may remove the current
30 guardian and appoint the petitioner, or such person as the
31

1 court deems in the best interest of the ward, as guardian of
2 the person or of the property, or both.

3 ~~(20)(b) Removal of the current guardian is in the best~~
4 ~~interest of the ward, the court may remove the current~~
5 ~~guardian and appoint the petitioner, or such person as the~~
6 ~~court deems in the best interest of the ward, either as~~
7 ~~guardian of the person or of the property, or both.~~

8 Section 24. Section 744.511, Florida Statutes, is
9 amended to read:

10 744.511 Accounting upon removal.--A removed guardian
11 shall file with the court a true, complete, and final report
12 of his or her guardianship within 20 days after removal and
13 shall serve a copy on the successor guardian and the ward,
14 unless the ward is a minor ~~under 14 years of age~~ or has been
15 determined to be totally incapacitated.

16 Section 25. Section 744.527, Florida Statutes, is
17 amended to read:

18 744.527 Final reports and application for discharge;
19 hearing.--

20 (1) When the court terminates the guardianship,
21 according to the reasons set forth in s. 744.521 the guardian
22 shall promptly file his or her final report. If the ward has
23 died, the guardian must file a final report with the court no
24 later than 45 days after he or she has been served with
25 letters of administration or letters of curatorship. If no
26 objections are filed and if it appears that the guardian has
27 made full and complete distribution to the person entitled and
28 has otherwise faithfully discharged his or her duties, the
29 court shall approve the final report. If objections are
30 filed, the court shall conduct a hearing in the same manner as
31

1 provided for a hearing on objections to annual guardianship
2 reports.

3 (2) The guardian applying for discharge may is
4 ~~authorized to~~ retain from the funds in his or her possession a
5 sufficient amount to pay the final costs of administration,
6 including guardian and attorney's fees regardless of the death
7 of the ward, accruing between the filing of his or her final
8 returns and the order of discharge.

9 Section 26. Subsection (3) of section 744.528, Florida
10 Statutes, is amended to read:

11 744.528 Discharge of guardian named as personal
12 representative.--

13 (3) Any interested person may file a notice of ~~The~~
14 ~~court shall set~~ a hearing on any objections filed by the
15 beneficiaries. Notice of the hearing must shall be served upon
16 the guardian, beneficiaries of the ward's estate, and any
17 other person to whom the court directs service. If a notice of
18 hearing on the objections is not served within 90 days after
19 filing of the objections, the objections are deemed abandoned.

20 Section 27. Subsection (6) of section 744.708, Florida
21 Statutes, is amended to read:

22 744.708 Reports and standards.--

23 (6) A The public guardian shall ensure that each of
24 the guardian's wards is personally visited ~~ward is seen by the~~
25 public guardian or by a professional staff person of the
26 public guardian at least once each calendar quarter ~~four times~~
27 ~~a year~~. During this personal visit, the public guardian or the
28 professional staff person shall assess:

29 (a) The ward's physical appearance and condition;

30 (b) The appropriateness of the ward's current living
31 situation; and

1 (c) The need for any additional services and the
2 necessity for continuation of existing services, taking into
3 consideration all aspects of social, psychological,
4 educational, direct service, health, and personal care needs.

5 Section 28. Paragraph (a) of subsection (5) of section
6 765.101, Florida Statutes, is amended to read:

7 765.101 Definitions.--As used in this chapter:

8 (5) "Health care decision" means:

9 (a) Informed consent, refusal of consent, or
10 withdrawal of consent to any and all health care, including
11 life-prolonging procedures and mental health treatment, unless
12 otherwise stated in the advance directives.

13 Section 29. Section 28.345, Florida Statutes, is
14 amended to read:

15 28.345 Exemption from court-related fees and
16 charges.--Notwithstanding any other ~~provision of this chapter~~
17 ~~or~~ law to the contrary, judges, state attorneys, guardians ad
18 litem, public guardians, and public defenders, acting in their
19 official capacity, and state agencies, are exempt from all
20 court-related fees and charges assessed by the clerks of the
21 circuit courts.

22 Section 30. Paragraph (c) of subsection (8) of section
23 121.091, Florida Statutes, is amended to read:

24 121.091 Benefits payable under the system.--Benefits
25 may not be paid under this section unless the member has
26 terminated employment as provided in s. 121.021(39)(a) or
27 begun participation in the Deferred Retirement Option Program
28 as provided in subsection (13), and a proper application has
29 been filed in the manner prescribed by the department. The
30 department may cancel an application for retirement benefits
31 when the member or beneficiary fails to timely provide the

1 | information and documents required by this chapter and the
2 | department's rules. The department shall adopt rules
3 | establishing procedures for application for retirement
4 | benefits and for the cancellation of such application when the
5 | required information or documents are not received.

6 | (8) DESIGNATION OF BENEFICIARIES.--

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

14 | Section 31. Subsection (1) of section 709.08, Florida
15 | Statutes, is amended to read:

16 | 709.08 Durable power of attorney.--

17 | (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
18 | power of attorney is a written power of attorney by which a
19 | principal designates another as the principal's attorney in
20 | fact. The durable power of attorney must be in writing, must
21 | be executed with the same formalities required for the
22 | conveyance of real property by Florida law, and must contain
23 | the words: "This durable power of attorney is not affected by
24 | subsequent incapacity of the principal except as provided in
25 | s. 709.08, Florida Statutes"; or similar words that show the
26 | principal's intent that the authority conferred is exercisable
27 | notwithstanding the principal's subsequent incapacity, except
28 | as otherwise provided by this section. The durable power of
29 | attorney is exercisable as of the date of execution; however,
30 | if the durable power of attorney is conditioned upon the
31 | principal's lack of capacity to manage property as defined in

1 s. 744.102(12)(a) ~~s. 744.102(11)(a)~~, the durable power of
2 attorney is exercisable upon the delivery of affidavits in
3 paragraphs (4)(c) and (d) to the third party.

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

6 744.1085 Regulation of professional guardians;
7 application; bond required; educational requirements.--

8 (3) Each professional guardian defined in s.
9 744.102(17) ~~s. 744.102(16)~~ and public guardian must receive a
10 minimum of 40 hours of instruction and training. Each
11 professional guardian must receive a minimum of 16 hours of
12 continuing education every 2 calendar years after the year in
13 which the initial 40-hour educational requirement is met. The
14 instruction and education must be completed through a course
15 approved or offered by the Statewide Public Guardianship
16 Office. The expenses incurred to satisfy the educational
17 requirements prescribed in this section may not be paid with
18 the assets of any ward. This subsection does not apply to any
19 attorney who is licensed to practice law in this state.

20 Section 33. For the purpose of incorporating the
21 amendment made by this act to section 744.3215, Florida
22 Statutes, in a reference thereto, subsection (4) of section
23 117.107, Florida Statutes, is reenacted to read:

24 117.107 Prohibited acts.--

25 (4) A notary public may not take the acknowledgment of
26 or administer an oath to a person whom the notary public
27 actually knows to have been adjudicated mentally incapacitated
28 by a court of competent jurisdiction, where the acknowledgment
29 or oath necessitates the exercise of a right that has been
30 removed pursuant to s. 744.3215(2) or (3), and where the
31

1 person has not been restored to capacity as a matter of
2 record.

3 Section 34. This act shall take effect July 1, 2005.
4

5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 Senate Bill 1958

8 This committee substitute makes the following changes:

- 9 -- Provides that the Statewide Public Guardianship Office is
10 authorized to suspend or revoke a guardian's registration
11 where that guardian has committed a violation of
12 guardianship law;
- 13 -- Conforms statutory requirements to current Department of
14 Law Enforcement practice regarding background checks of
15 guardians;
- 16 -- Requires the agency conducting the criminal background
17 check to immediately notify the Statewide Public
18 Guardianship Office of the results;
- 19 -- Removes new sources of funding for the Statewide Public
20 Guardianship Office; and
- 21 -- Makes removal of the current guardian if it is in the
22 best interest of the ward a stand-alone provision, so
23 that an independent basis exists for removal of a
24 guardian.
25
26
27
28
29
30
31