

By the Committees on Children and Families; Judiciary; and
Senators Saunders and Fasano

586-2272-05

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 history record
12 check; authorizing a guardian to use electronic
13 fingerprinting equipment that is available for
14 criminal history record checks of public
15 employees; providing that a guardian need not
16 be rescreened if he or she uses certain
17 electronic fingerprinting equipment; requiring
18 the Department of Law Enforcement to retain
19 electronically submitted fingerprints and to
20 enter them into the statewide automated
21 fingerprint identification system; requiring
22 the department to search all fingerprint cards
23 received from each guardian and each employee
24 of such guardian against fingerprints retained
25 in the statewide automated fingerprint
26 identification system; requiring a guardian to
27 pay an annual fee to the clerk of court for the
28 background investigation; requiring a guardian
29 and each employee of such guardian to complete
30 an investigation of his or her credit history;
31 requiring the Statewide Public Guardianship

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

1 guardianship; amending s. 744.361, F.S.;
2 requiring a professional guardian to ensure
3 that each of his or her wards is personally
4 visited at least quarterly; providing for the
5 assessment of certain conditions during the
6 personal visit; amending s. 744.365, F.S.;
7 requiring that the verified inventory include
8 information on any trust to which a ward is a
9 beneficiary; amending s. 744.367, F.S.;
10 requiring that the annual report of the
11 guardian be filed on or before April 1 of each
12 year; amending s. 744.3675, F.S.; requiring
13 that the annual guardianship plan include
14 information on the mental condition of the
15 ward; providing for an annual guardianship plan
16 for wards who are minors; amending s. 744.3678,
17 F.S.; providing that property of or a trust
18 benefiting the ward which is not under the
19 control of the guardian is not subject to
20 annual accounting; requiring certain
21 documentation for the annual accounting;
22 amending s. 744.3679, F.S.; removing a
23 provision prohibiting the clerk of court from
24 having responsibility for monitoring or
25 auditing accounts in certain cases; amending s.
26 744.368, F.S.; requiring that the verified
27 inventory and the accountings be audited within
28 a specified time period; amending s. 744.441,
29 F.S.; requiring the court to retain oversight
30 for assets of a ward transferred to a trust;
31 creating s. 744.442, F.S.; providing that a

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

1 personally visited at least quarterly;
2 providing for the assessment of certain
3 conditions during the personal visit; amending
4 s. 765.101, F.S.; redefining the term "health
5 care decision" to include informed consent for
6 mental health treatment services; amending s.
7 28.345, F.S.; exempting a public guardian from
8 paying court-related fees and charges; amending
9 ss. 121.091, 709.08, and 744.1085, F.S.;
10 conforming cross-references; reenacting s.
11 117.107(4), F.S., relating to prohibited acts
12 of a notary public, to incorporate the
13 amendment made to s. 744.3215, F.S., in a
14 reference thereto; providing an effective date.
15

16 Be It Enacted by the Legislature of the State of Florida:
17

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

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

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

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

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

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.

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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.

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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 in the file documentation of
13 the result of any investigation conducted under this section.
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 history record check by any method described in this
20 subsection. A guardian satisfies the requirements of this
21 section by undergoing:

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

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

1 (3)(a) A professional guardian, and each employee of a
2 professional guardian who has a fiduciary responsibility to a
3 ward, must complete, at his or her own expense, a level 2
4 background screening as set forth in s. 435.04, before and at
5 least once every 5 years after the date the guardian is
6 appointed. A professional guardian, and each employee of a
7 professional guardian who has a fiduciary responsibility to a
8 ward, must complete, at his or her own expense, a level 1
9 background screening as set forth in s. 435.03, at least once
10 every 2 years after the date the guardian is appointed.
11 However, a person is not required to resubmit fingerprints for
12 a criminal history record check if he or she has been screened
13 using electronic fingerprinting equipment and the fingerprints
14 are retained by the Department of Law Enforcement in order to
15 notify the clerk of the court of any crime charged against the
16 person in the State of Florida or elsewhere as appropriate.
17 (b) Effective December 15, 2005, all fingerprints
18 electronically submitted to the Department of Law Enforcement
19 under this section shall be retained by the Department of Law
20 Enforcement in a manner provided by rule and entered in the
21 statewide automated fingerprint identification system
22 authorized by s. 943.05(2)(b). The fingerprints shall
23 thereafter be available for all purposes and uses authorized
24 for arrest fingerprint cards entered in the statewide
25 automated fingerprint identification system under s. 943.051.
26 (c) Effective December 15, 2005, the Department of Law
27 Enforcement shall search all arrest fingerprint cards received
28 under s. 943.051 against the fingerprints retained in the
29 statewide automated fingerprint identification system under
30 paragraph (b). Any arrest record that is identified with the
31 fingerprints of a person described in this paragraph must be

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

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

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

29 (5) The Statewide Public Guardianship Office may
30 inspect at any time the results of any credit or criminal
31 investigation of a public or professional guardian conducted

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

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

14 ~~(6)(2)~~ The requirements of this section do does not
15 apply to a professional guardian, or to the employees of a
16 professional guardian, which is a trust company, a state
17 banking corporation or state savings association authorized
18 and qualified to exercise fiduciary powers in this state, or a
19 national banking association or federal savings and loan
20 association authorized and qualified to exercise fiduciary
21 powers in this state.

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

24 744.3145 Guardian education requirements.--

25 (4) Each person appointed by the court to be a
26 guardian must complete the required number of hours of
27 instruction and education within 4 months ~~1 year~~ after his or
28 her appointment as guardian. The instruction and education
29 must be completed through a course approved by the chief judge
30 of the circuit court and taught by a court-approved
31 organization. Court-approved organizations may include, but

1 are not limited to, community or junior colleges, guardianship
2 organizations, and the local bar association or The Florida
3 Bar.

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

7 744.3215 Rights of persons determined incapacitated.--

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

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

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

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

18 (b) To vote.

19 (c) To personally apply for government benefits.

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

21 (e) To travel.

22 (f) To seek or retain employment.

23 Section 11. Subsections (2), (3), and (7) of section
24 744.331, Florida Statutes, are amended to read:

25 744.331 Procedures to determine incapacity.--

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

27 (a) When a court appoints an attorney for an alleged
28 incapacitated person, the court must appoint an attorney who
29 is included in the attorney registry compiled by the circuit's
30 Article V indigent services committee. Appointments must be
31

1 made on a rotating basis, taking into consideration conflicts
2 arising under this chapter.

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

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

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

20 (3) EXAMINING COMMITTEE.--

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

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

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

29 (c) Each person appointed to an examining committee
30 must file an affidavit with the court stating that he or she
31 has completed the required courses or will do so no later than

1 4 months after his or her initial appointment. Each year, the
2 chief judge of the circuit must prepare a list of persons
3 qualified to be members of the examining committee.

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

20 ~~(e)(b)~~ Each member of the examining committee shall
21 examine the person. Each ~~The~~ examining committee member must
22 ~~shall~~ determine the alleged incapacitated person's ability to
23 exercise those rights specified in s. 744.3215. In addition to
24 the examination, each ~~the~~ examining committee member must
25 ~~shall~~ have access to, and may consider, previous examinations
26 of the person, including, but not limited to, habilitation
27 plans, school records, and psychological and psychosocial
28 reports voluntarily offered for use by the alleged
29 incapacitated person. Each member of the examining committee
30 must ~~shall~~ submit a report within 15 days after appointment.
31

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

- 8 1. A physical examination;
- 9 2. A mental health examination; and
- 10 3. A functional assessment.

11
12 If any of these three aspects of the examination is not
13 indicated or cannot be accomplished for any reason, the
14 written report must explain the reasons for its omission.

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

16 1. To the extent possible, a diagnosis, prognosis, and
17 recommended course of treatment.

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

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

27 4. A description of any matters with respect to which
28 the person lacks the capacity to exercise rights, the extent
29 of that incapacity, and the factual basis for the
30 determination that the person lacks that capacity.

31

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

7 ~~6.5-~~ The signature of each member of the committee and
8 the date and time each member conducted his or her
9 examination.

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

14 (7) FEES.--

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

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

30 (c) If the petition is dismissed, costs and attorney's
31 fees of the proceeding may be assessed against the petitioner

1 if the court finds the petition to have been filed in bad
2 faith.

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

7 744.341 Voluntary guardianship.--

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

15 (5)(4) A voluntary guardianship may be terminated by
16 the ward by filing a notice with the court that the voluntary
17 guardianship is terminated. The notice must be accompanied by
18 a certificate from a licensed physician who has examined the
19 ward not more than 30 days before the ward filed the notice
20 with the court. The physician must certify that the ward is
21 competent to understand the implications of terminating the
22 guardianship. A copy of the notice and certificate must be
23 served on all interested persons.

24 Section 13. Subsection (9) is added to section
25 774.361, Florida Statutes, to read:

26 744.361 Powers and duties of guardian.--

27 (9) A professional guardian must ensure that each of
28 the guardian's wards is personally visited by the guardian or
29 one of the guardian's professional staff at least once each
30 calendar quarter. During the personal visit, the guardian or
31 the guardian's professional staff person shall assess:

- 1 (a) The ward's physical appearance and condition;
2 (b) The appropriateness of the ward's current living
3 situation; and
4 (c) The need for any additional services and the
5 necessity for continuation of existing services, taking into
6 consideration all aspects of social, psychological,
7 educational, direct service, health, and personal care needs.

8
9 This subsection does not apply to a professional guardian who
10 has been appointed only as guardian of the property.

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

13 744.365 Verified inventory.--

14 (2) CONTENTS.--The verified inventory must include the
15 following:

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

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

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

27 Section 15. Subsections (1) and (3) of section
28 744.367, Florida Statutes, are amended to read:

29 744.367 Duty to file annual guardianship report.--

30 (1) Unless the court requires filing on a
31 calendar-year basis, each guardian of the person shall file

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

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

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

18 744.3675 Annual guardianship plan.--Each guardian of
19 the person must file with the court an annual guardianship
20 plan which updates information about the condition of the
21 ward. The annual plan must specify the current needs of the
22 ward and how those needs are proposed to be met in the coming
23 year.

24 (1) Each plan for an adult ward must, if applicable,
25 include:

26 (a) Information concerning the residence of the ward,
27 including:

- 28 1. The ward's address at the time of filing the plan;
- 29 2. The name and address of each place where the ward
30 was maintained during the preceding year;
- 31 3. The length of stay of the ward at each place;

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

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

6 (b) Information concerning the medical and mental
7 health conditions ~~condition~~ and treatment and rehabilitation
8 needs of the ward, including:

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

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

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

18 (c) Information concerning the social condition of the
19 ward, including:

20 1. The social and personal services currently used
21 ~~utilized~~ by the ward;

22 2. The social skills of the ward, including a
23 statement of how well the ward communicates and maintains
24 interpersonal relationships with others; and

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

27 ~~3.4.~~ The social needs of the ward.

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

30 (a) Information concerning the residence of the minor,
31 including:

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

1 ~~(4)(3)~~ The court, in its discretion, may require
2 reexamination of the ward by a physician at any time.

3 Section 17. Subsections (2) and (3) of section
4 744.3678, Florida Statutes, are amended to read:

5 744.3678 Annual accounting.--

6 (2) The annual accounting must include:

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

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

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

27 Section 18. Section 744.3679, Florida Statutes, is
28 amended to read:

29 744.3679 Simplified accounting procedures in certain
30 cases.--

31

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

7 (a) The original or a certified copy of the year-end
8 statement of the ward's account from the financial
9 institution; and

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

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

15 (2)(3) The accounting allowed by subsection (1) is in
16 lieu of the accounting and auditing procedures under s.
17 744.3678(2) ~~ss. 744.3678 and 744.368(1)(f)~~. However, any
18 interested party may seek judicial review as provided in s.
19 744.3685.

20 ~~(3)(4)~~ The guardian need not be represented by an
21 attorney in order to file the annual accounting allowed by
22 subsection (1).

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

25 744.368 Responsibilities of the clerk of the circuit
26 court.--

27 (3) Within 90 days after the filing of the verified
28 inventory and accountings ~~initial or annual guardianship~~
29 ~~report~~ by a guardian of the property, the clerk shall audit
30 the verified inventory and ~~or~~ the accountings ~~annual~~
31

1 ~~accounting~~. The clerk shall advise the court of the results of
2 the audit.

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

5 744.441 Powers of guardian upon court approval.--After
6 obtaining approval of the court pursuant to a petition for
7 authorization to act, a plenary guardian of the property, or a
8 limited guardian of the property within the powers granted by
9 the order appointing the guardian or an approved annual or
10 amended guardianship report, may:

11 (19) Create or amend revocable or irrevocable trusts
12 of property of the ward's estate which may extend beyond the
13 disability or life of the ward in connection with estate,
14 gift, income, or other tax planning or in connection with
15 estate planning. Notwithstanding the provisions of s.
16 737.201(2), and unless otherwise ordered, the court shall
17 retain continuing supervisory jurisdiction over any trust so
18 created or amended, and over the trustee or trustees of any
19 trust so created or amended, who by accepting the trusteeship
20 or the amendment shall be deemed to have submitted personally
21 to the jurisdiction of the court for all purposes.

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
9 In determining whether a guardian who is related by blood or
10 marriage to the ward is to be removed, there shall be a
11 rebuttable presumption that the guardian is acting in the best
12 interests of the ward.

13 Section 24. Section 744.511, Florida Statutes, is
14 amended to read:

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

21 Section 25. Section 744.527, Florida Statutes, is
22 amended to read:

23 744.527 Final reports and application for discharge;
24 hearing.--

25 (1) When the court terminates the guardianship,
26 according to the reasons set forth in s. 744.521 the guardian
27 shall promptly file his or her final report. If the ward has
28 died, the guardian must file a final report with the court no
29 later than 45 days after he or she has been served with
30 letters of administration or letters of curatorship. If no
31 objections are filed and if it appears that the guardian has

1 made full and complete distribution to the person entitled and
2 has otherwise faithfully discharged his or her duties, the
3 court shall approve the final report. If objections are
4 filed, the court shall conduct a hearing in the same manner as
5 provided for a hearing on objections to annual guardianship
6 reports.

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

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

15 744.528 Discharge of guardian named as personal
16 representative.--

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

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

26 744.708 Reports and standards.--

27 (6) A ~~The~~ public guardian shall ensure that each of
28 the guardian's wards is personally visited ~~ward is seen by the~~
29 public guardian or by a professional staff person of the
30 public guardian at least once each calendar quarter ~~four times~~

31

1 ~~a year.~~ During this personal visit, the public guardian or the
2 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 Section 28. Paragraph (a) of subsection (5) of section
11 765.101, Florida Statutes, is amended to read:

12 765.101 Definitions.--As used in this chapter:

13 (5) "Health care decision" means:

14 (a) Informed consent, refusal of consent, or
15 withdrawal of consent to any and all health care, including
16 life-prolonging procedures and mental health treatment, unless
17 otherwise stated in the advance directives.

18 Section 29. Section 28.345, Florida Statutes, is
19 amended to read:

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

27 Section 30. Paragraph (c) of subsection (8) of section
28 121.091, Florida Statutes, is amended to read:

29 121.091 Benefits payable under the system.--Benefits
30 may not be paid under this section unless the member has
31 terminated employment as provided in s. 121.021(39)(a) or

1 begun participation in the Deferred Retirement Option Program
2 as provided in subsection (13), and a proper application has
3 been filed in the manner prescribed by the department. The
4 department may cancel an application for retirement benefits
5 when the member or beneficiary fails to timely provide the
6 information and documents required by this chapter and the
7 department's rules. The department shall adopt rules
8 establishing procedures for application for retirement
9 benefits and for the cancellation of such application when the
10 required information or documents are not received.

11 (8) DESIGNATION OF BENEFICIARIES.--

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

19 Section 31. Subsection (1) of section 709.08, Florida
20 Statutes, is amended to read:

21 709.08 Durable power of attorney.--

22 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
23 power of attorney is a written power of attorney by which a
24 principal designates another as the principal's attorney in
25 fact. The durable power of attorney must be in writing, must
26 be executed with the same formalities required for the
27 conveyance of real property by Florida law, and must contain
28 the words: "This durable power of attorney is not affected by
29 subsequent incapacity of the principal except as provided in
30 s. 709.08, Florida Statutes"; or similar words that show the
31 principal's intent that the authority conferred is exercisable

1 notwithstanding the principal's subsequent incapacity, except
2 as otherwise provided by this section. The durable power of
3 attorney is exercisable as of the date of execution; however,
4 if the durable power of attorney is conditioned upon the
5 principal's lack of capacity to manage property as defined in
6 s. 744.102(12)(a) ~~s. 744.102(11)(a)~~, the durable power of
7 attorney is exercisable upon the delivery of affidavits in
8 paragraphs (4)(c) and (d) to the third party.

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

11 744.1085 Regulation of professional guardians;
12 application; bond required; educational requirements.--

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

25 Section 33. For the purpose of incorporating the
26 amendment made by this act to section 744.3215, Florida
27 Statutes, in a reference thereto, subsection (4) of section
28 117.107, Florida Statutes, is reenacted to read:

29 117.107 Prohibited acts.--

30 (4) A notary public may not take the acknowledgment of
31 or administer an oath to a person whom the notary public

1 actually knows to have been adjudicated mentally incapacitated
2 by a court of competent jurisdiction, where the acknowledgment
3 or oath necessitates the exercise of a right that has been
4 removed pursuant to s. 744.3215(2) or (3), and where the
5 person has not been restored to capacity as a matter of
6 record.

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

8
9 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
10 COMMITTEE SUBSTITUTE FOR
11 CS/SB 1958

12 Makes technical and clarifying changes to statutory provisions
13 relating to background screening for guardians and to
14 provisions relating to annual accounting requirements and
continued court jurisdiction over certain trusts.

15 Provides that when the court is considering removing a
16 guardian and the guardian is a relative by blood or marriage,
there is a rebuttable presumption that the guardian is acting
in the ward's best interest.

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