

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

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

57 | stating that he or she has completed or will timely  
58 | complete the mandatory training; providing for training  
59 | programs; requiring each member to report the time and  
60 | date that he or she examined the person alleged to be  
61 | incapacitated, the names of all persons present during the  
62 | examination, and the response and name of each person  
63 | supplying an answer posed to the examinee; providing for  
64 | an award of attorney's fees; amending s. 744.341, F.S.;  
65 | requiring the voluntary guardian to include certain  
66 | information in the annual report; requiring that certain  
67 | specified information be included in the notice to  
68 | terminate a voluntary guardianship; amending s. 744.361,  
69 | F.S.; requiring a professional guardian to ensure that  
70 | each of his or her wards is personally visited at least  
71 | quarterly; providing for the assessment of certain  
72 | conditions during the personal visit; providing an  
73 | exemption; amending s. 744.365, F.S.; requiring that the  
74 | verified inventory include information on any trust to  
75 | which a ward is a beneficiary; amending s. 744.367, F.S.;  
76 | requiring that the annual report of the guardian filing on  
77 | a calendar-year basis be filed on or before a specified  
78 | date; exempting all minor wards from service of the annual  
79 | report; amending s. 744.3675, F.S.; requiring that the  
80 | annual guardianship plan include information on the mental  
81 | condition of the ward; providing for an annual  
82 | guardianship plan for wards who are minors; amending s.  
83 | 744.3678, F.S.; providing that property of the ward which  
84 | is not under the control of the guardian, including

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

113 the ward; amending s. 744.511, F.S.; providing that a ward  
 114 who is a minor need not be served with the final report of  
 115 a removed guardian; amending s. 744.527, F.S.; providing  
 116 that final reports for a deceased ward be filed at a  
 117 specified time; amending s. 744.528, F.S.; providing for a  
 118 notice of the hearing for objections to a report filed by  
 119 a guardian; amending s. 744.708, F.S.; requiring a public  
 120 guardian to ensure that each of his or her wards is  
 121 personally visited at least quarterly; providing for the  
 122 assessment of certain conditions during the personal  
 123 visit; amending s. 765.101, F.S.; redefining the term  
 124 "health care decision" to include informed consent for  
 125 mental health treatment services; amending s. 28.345,  
 126 F.S.; revising provisions relating to exemptions from  
 127 paying court-related fees and charges; amending ss.  
 128 121.091, 121.4501, 709.08, and 744.1085, F.S.; conforming  
 129 cross-references; reenacting s. 117.107(4), F.S., relating  
 130 to prohibited acts of a notary public, to incorporate the  
 131 amendment made to s. 744.3215, F.S., in a reference  
 132 thereto; amending s. 318.18, F.S.; authorizing a county to  
 133 impose a surcharge on certain civil penalties to fund  
 134 local participation in the public guardianship program;  
 135 prescribing prerequisites for imposing the surcharge;  
 136 providing a limit on the surcharge; creating s. 938.065,  
 137 F.S.; requiring that a specified surcharge be assessed  
 138 against all misdemeanor offenses; providing that the clerk  
 139 of the court may retain a service charge; directing that  
 140 the funds collected be used to fund public guardianship

141 programs; providing an effective date.

142

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

144

145 Section 1. Section 744.102, Florida Statutes, is amended  
146 to read:

147 744.102 Definitions.--As used in this chapter, the term:

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

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

156 (3)~~(2)~~ "Clerk" means the clerk or deputy clerk of the  
157 court.

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

161 (5)~~(4)~~ "Court" means the circuit court.

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

165 (7)~~(6)~~ "Estate" means the property of a ward subject to  
166 administration.

167 (8)~~(7)~~ "Foreign guardian" means a guardian appointed in  
168 another state or country.

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

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

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

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

188        (11)~~(10)~~ "Guardian advocate" means a person appointed by a  
 189 written order of the court to represent a person with  
 190 developmental disabilities under s. 393.12. As used in this  
 191 chapter, the term does not apply to a guardian advocate  
 192 appointed for a person determined incompetent to consent to  
 193 treatment under s. 394.4598.

194        (12)~~(11)~~ "Incapacitated person" means a person who has  
 195 been judicially determined to lack the capacity to manage at  
 196 least some of the property or to meet at least some of the

197 essential health and safety requirements of the ~~such~~ person.

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

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

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

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

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

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

220 ~~(17)~~(16) "Professional guardian" means any guardian who  
 221 ~~receives or has at any time received compensation for services~~  
 222 rendered services to three or more than two wards as their  
 223 guardian. A person serving as a guardian for two or more  
 224 relatives as defined in s. 744.309(2) is not considered a



225 professional guardian. A public guardian shall be considered a  
 226 professional guardian for purposes of regulation, education, and  
 227 registration.

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

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

235 (20) "Surrogate guardian" means a guardian designated  
 236 according to s. 744.442.

237 (21)~~(19)~~ "Totally incapacitated" means incapable of  
 238 exercising any of the rights enumerated in s. 744.3215(2) and  
 239 (3).

240 (22)~~(20)~~ "Ward" means a person for whom a guardian has  
 241 been appointed.

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

244 744.1083 Professional guardian registration.--

245 (10) A state college or university or an independent  
 246 college or university described in s. 1009.98(3)(a), may, but is  
 247 not required to, register as a professional guardian under this  
 248 section. If a state college or university or independent college  
 249 or university elects to register as a professional guardian  
 250 under this subsection, the requirements of subsections (3) and  
 251 (4) ~~subsection (3)~~ do not apply and the registration must  
 252 include only the name, address, and employer identification

253 number of the registrant.

254 Section 3. Section 744.301, Florida Statutes, is amended  
 255 to read:

256 744.301 Natural guardians.--

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

273 (2) ~~The Natural guardian or~~ guardians are authorized, on  
 274 behalf of any of their minor children, to:

275 (a) Settle and consummate a settlement of any claim or  
 276 cause of action accruing to any of their minor children for  
 277 damages to the person or property of any of said minor children;

278 (b) Collect, receive, manage, and dispose of the proceeds  
 279 of any such settlement;

280 (c) Collect, receive, manage, and dispose of any real or  
 281 personal property distributed from an estate or trust;

282 (d) Collect, receive, manage, and dispose of and make  
 283 elections regarding the proceeds from a life insurance policy or  
 284 annuity contract payable to, or otherwise accruing to the  
 285 benefit of, the child; and

286 (e) Collect, receive, manage, dispose of, and make  
 287 elections regarding the proceeds of any benefit plan as defined  
 288 by s. 710.102, of which the minor is a beneficiary, participant,  
 289 or owner,

290  
 291 without appointment, authority, or bond, when the amounts  
 292 received, in the aggregate, do amount involved in any instance  
 293 ~~does~~ not exceed \$15,000.

294 (3) All instruments executed by a natural guardian for the  
 295 benefit of the ward under the powers specified provided for in  
 296 subsection (2) shall be binding on the ward. The natural  
 297 guardian may not, without a court order, use the property of the  
 298 ward for the guardian's benefit or to satisfy the guardian's  
 299 support obligation to the ward.

300 ~~(4)(a) In any case where a minor has a claim for personal~~  
 301 ~~injury, property damage, or wrongful death in which the gross~~  
 302 ~~settlement for the claim of the minor exceeds \$15,000, the court~~  
 303 ~~may, prior to the approval of the settlement of the minor's~~  
 304 ~~claim, appoint a guardian ad litem to represent the minor's~~  
 305 ~~interests. In any case in which the gross settlement involving a~~  
 306 ~~minor equals or exceeds \$25,000, the court shall, prior to the~~  
 307 ~~approval of the settlement of the minor's claim, appoint a~~

308 ~~guardian ad litem to represent the minor's interests. The~~  
 309 ~~appointment of the guardian ad litem must be without the~~  
 310 ~~necessity of bond or a notice. The duty of the guardian ad litem~~  
 311 ~~is to protect the minor's interests. The procedure for carrying~~  
 312 ~~out that duty is as prescribed in the Florida Probate Rules. If~~  
 313 ~~a legal guardian of the minor has previously been appointed and~~  
 314 ~~has no potential adverse interest to the minor, the court may~~  
 315 ~~not appoint a guardian ad litem to represent the minor's~~  
 316 ~~interests, unless the court determines that the appointment is~~  
 317 ~~otherwise necessary.~~

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

321 Section 4. Section 744.3025, Florida Statutes, is created  
 322 to read:

323 744.3025 Claims of minors.--

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

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

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

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

338           (e) A court need not appoint a guardian ad litem for the  
 339 minor if a guardian of the minor has previously been appointed  
 340 and that guardian has no potential adverse interest to the  
 341 minor. A court may appoint a guardian ad litem if the court  
 342 believes a guardian ad litem is necessary to protect the  
 343 interests of the minor.

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

347           Section 5. Subsection (3) of section 744.3031, Florida  
 348 Statutes, is amended, and subsection (8) is added to that  
 349 section, to read:

350           744.3031 Emergency temporary guardianship.--

351           (3) The authority of an emergency temporary guardian  
 352 expires 90 ~~60~~ days after the date of appointment or when a  
 353 guardian is appointed, whichever occurs first. The authority of  
 354 the emergency temporary guardian may be extended for an  
 355 additional 90 ~~30~~ days upon a showing that the emergency  
 356 conditions still exist.

357           (8)(a) An emergency temporary guardian shall file a final  
 358 report no later than 30 days after the expiration of the  
 359 emergency temporary guardianship.

360           (b) An emergency temporary guardian is a guardian for the  
 361 property. The final report must consist of a verified inventory  
 362 of the property, as provided in s. 744.365, as of the date the  
 363 letters of emergency temporary guardianship were issued, a final

364 accounting that gives a full and correct account of the receipts  
 365 and disbursements of all the property of the ward over which the  
 366 guardian had control, and a statement of the property of the  
 367 ward on hand at the end of the emergency temporary guardianship.  
 368 If the emergency temporary guardian becomes the successor  
 369 guardian of the property, the final report must satisfy the  
 370 requirements of the initial guardianship report for the guardian  
 371 of the property as provided in s. 744.362.

372 (c) If the emergency temporary guardian is a guardian of  
 373 the person, the final report must summarize the activities of  
 374 the temporary guardian with regard to residential placement,  
 375 medical condition, mental health and rehabilitative services,  
 376 and the social condition of the ward to the extent of the  
 377 authority granted to the temporary guardian in the letters of  
 378 guardianship. If the emergency temporary guardian becomes the  
 379 successor guardian of the person, the report must satisfy the  
 380 requirements of the initial report for a guardian of the person  
 381 as stated in s. 744.362.

382 (d) A copy of the final report of the emergency temporary  
 383 guardianship shall be served on the successor guardian and the  
 384 ward.

385 Section 6. Section 744.304, Florida Statutes, is amended  
 386 to read:

387 744.304 Standby guardianship.--

388 (1) Upon a petition by the natural guardians or a guardian  
 389 appointed under s. 744.3021, the court may appoint a standby  
 390 guardian of the person or property of a minor ~~or consent of both~~  
 391 ~~parents, natural or adoptive, if living, or of the surviving~~

392 ~~parent, a standby guardian of the person or property of a minor~~  
 393 ~~may be appointed by the court.~~ The court may also appoint an  
 394 alternate to the guardian to act if the standby guardian does  
 395 not serve or ceases to serve after appointment. Notice of a  
 396 hearing on the petition must be served on the parents, natural  
 397 or adoptive, and on any guardian currently serving unless the  
 398 notice is waived in writing by them or waived by the court for  
 399 good cause shown ~~shall renounce, die, or become incapacitated~~  
 400 ~~after the death of the last surviving parent of the minor.~~

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

405 (3) The standby guardian or alternate shall be empowered  
 406 to assume the duties of guardianship ~~his or her office~~  
 407 immediately on the death, removal, or resignation of the  
 408 guardian of a minor, or on the death or adjudication of  
 409 incapacity of the last surviving natural guardian ~~or adoptive~~  
 410 ~~parent~~ of a minor, or upon the death, removal, or resignation of  
 411 the guardian for an adult. The; ~~however, such a~~ guardian of the  
 412 ward's property may not be empowered to deal with the ward's  
 413 property, other than to safeguard it, before ~~prior to~~ issuance  
 414 of letters of guardianship. If the ward ~~incapacitated person~~ is  
 415 over the age of 18 years, the court shall conduct a hearing as  
 416 provided in s. 744.331 before confirming the appointment of the  
 417 standby guardian, unless the ward has previously been found to  
 418 be incapacitated.

419 (4) Within 20 days after assumption of duties as guardian,

420 a standby guardian shall petition for confirmation of  
 421 appointment. If the court finds the standby guardian to be  
 422 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309 and  
 423 744.312, appointment of the guardian must be confirmed. Each  
 424 guardian so confirmed shall file an oath in accordance with s.  
 425 744.347, ~~and~~ shall file a bond, and shall submit to a credit and  
 426 criminal investigation as set forth in s. 744.3135, if required.  
 427 Letters of guardianship must then be issued in the manner  
 428 provided in s. 744.345.

429 (5) After the assumption of duties by a standby guardian,  
 430 the court shall have jurisdiction over the guardian and the  
 431 ward.

432 Section 7. Section 744.3115, Florida Statutes, is amended  
 433 to read:

434 744.3115 Advance directives for health care.--In each  
 435 proceeding in which a guardian is appointed under this chapter,  
 436 the court shall determine whether the ward, prior to incapacity,  
 437 has executed any valid advance directive under ~~pursuant to~~  
 438 chapter 765. If any ~~such~~ advance directive exists, the court  
 439 shall specify in its order and letters of guardianship what  
 440 authority, if any, the guardian shall exercise over the  
 441 surrogate. Pursuant to the grounds listed in s. 765.105, the  
 442 court, upon its own motion, may, with notice to the surrogate  
 443 and any other appropriate parties, modify or revoke the  
 444 authority of the surrogate to make health care decisions for the  
 445 ward. For purposes of this section, the term "health care  
 446 decision" has the same meaning as in s. 765.101.

447 Section 8. Section 744.3135, Florida Statutes, is amended



448 to read:

449 744.3135 Credit and criminal investigation.--

450 (1) The court may require a nonprofessional guardian and  
451 shall require a professional or public guardian, and all  
452 employees of a professional guardian who have a fiduciary  
453 responsibility to a ward, to submit, at their own expense, to an  
454 investigation of the guardian's credit history and to undergo  
455 level 2 background screening as required under s. 435.04. ~~If a~~  
456 credit or criminal investigation is required, the court must  
457 consider the results of any investigation before appointing a  
458 guardian. At any time, the court may require a guardian or the  
459 guardian's employees to submit to an investigation of the  
460 person's credit history and complete a level 1 background  
461 screening as set forth in s. 435.03. The court shall consider  
462 the results of any investigation when reappointing a guardian.  
463 The clerk of the court shall maintain a file on each guardian  
464 appointed by the court and retain in the file documentation of  
465 the result of any investigation conducted under this section. A  
466 professional guardian must pay the clerk of the court a fee of  
467 up to \$7.50 for handling and processing professional guardian  
468 files.

469 (2) The court and the Statewide Public Guardianship Office  
470 shall accept the satisfactory completion of a criminal  
471 background investigation by any method described in this  
472 subsection. A guardian satisfies the requirements of this  
473 section by undergoing:

474 (a) An inkless electronic fingerprint criminal background  
475 investigation. A guardian may use any inkless electronic

476 fingerprinting equipment used for criminal background  
 477 investigations of public employees. The guardian shall pay the  
 478 actual costs incurred by the Federal Bureau of Investigation and  
 479 the Department of Law Enforcement for the criminal background  
 480 investigation. The agency that operates the equipment used by  
 481 the guardian may charge the guardian an additional fee, not to  
 482 exceed \$10, for the use of the equipment. The agency completing  
 483 the investigation must immediately send the results of the  
 484 criminal background investigation to the clerk of the court and  
 485 the Statewide Public Guardianship Office. The clerk of the court  
 486 shall maintain the results in the guardian's file and shall make  
 487 the results available to the court; or

488 (b) A criminal background investigation using a  
 489 fingerprint card. The clerk of the court shall obtain  
 490 fingerprint cards from the Federal Bureau of Investigation and  
 491 make them available to guardians. Any guardian who is so  
 492 required shall have his or her fingerprints taken and forward  
 493 the proper fingerprint card along with the necessary fee to the  
 494 Florida Department of Law Enforcement for processing. The  
 495 professional guardian shall pay to the clerk of the court a fee  
 496 of up to \$7.50 for handling and processing professional guardian  
 497 files. The results of the fingerprint card background  
 498 investigations ~~checks~~ shall be forwarded to the clerk of the  
 499 court who shall maintain the results in the guardian's a  
 500 guardian file and shall make the results available to the court  
 501 and the Statewide Public Guardianship Office.

502 (3)(a) A professional guardian, and each employee of a  
 503 professional guardian who has a fiduciary responsibility to a

504 ward, must complete, at his or her own expense, a level 2  
505 background screening as set forth in s. 435.04 before and at  
506 least once every 5 years after the date the guardian is  
507 appointed. A professional guardian, and each employee of a  
508 professional guardian who has a fiduciary responsibility to a  
509 ward, must complete, at his or her own expense, a level 1  
510 background screening as set forth in s. 435.03 at least once  
511 every 2 years after the date the guardian is appointed. However,  
512 a person is not required to resubmit fingerprints for a criminal  
513 background investigation if he or she has been screened using  
514 inkless electronic fingerprinting equipment that is capable of  
515 notifying the clerk of the court of any crime charged against  
516 the person in this state or elsewhere, as appropriate.

517 (b) Effective December 15, 2006, all fingerprints  
518 electronically submitted to the Department of Law Enforcement  
519 under this section shall be retained by the Department of Law  
520 Enforcement in a manner provided by rule and entered in the  
521 statewide automated fingerprint identification system authorized  
522 by s. 943.05(2)(b). The fingerprints shall thereafter be  
523 available for all purposes and uses authorized for arrest  
524 fingerprint cards entered in the Criminal Justice Information  
525 Program under s. 943.051.

526 (c) Effective December 15, 2006, the Department of Law  
527 Enforcement shall search all arrest fingerprint cards received  
528 under s. 943.051 against the fingerprints retained in the  
529 statewide automated fingerprint identification system under  
530 paragraph (b). Any arrest record that is identified with the  
531 fingerprints of a person described in this paragraph must be

532 reported as soon as possible to the clerk of the court. The  
 533 clerk of the court must forward any arrest record received for a  
 534 professional guardian to the Statewide Public Guardianship  
 535 Office within 5 days. Each guardian who elects to undergo an  
 536 inkless electronic background investigation shall participate in  
 537 this search process by paying an annual fee to the clerk of the  
 538 court and by informing the clerk of the court of any change in  
 539 the status of his or her guardianship appointment. The amount of  
 540 the annual fee to be imposed upon each clerk of the court for  
 541 performing these searches and the procedures for the retention  
 542 of guardian fingerprints and the dissemination of search results  
 543 shall be established by rule of the Department of Law  
 544 Enforcement. The fee may be borne by the clerk of the court or  
 545 the guardian, but may not exceed \$10.

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

551 (b) The Statewide Public Guardianship Office shall adopt a  
 552 rule detailing the acceptable methods for completing a credit  
 553 investigation under this section. If appropriate, the Statewide  
 554 Public Guardianship Office may administer credit investigations.  
 555 If the office chooses to administer the credit investigation,  
 556 the office may adopt a rule setting a fee, not to exceed \$25, to  
 557 reimburse the costs associated with the administration of a  
 558 credit investigation.

559 (5) The Statewide Public Guardianship Office may inspect

560 at any time the results of any credit or criminal investigation  
561 of a public or professional guardian conducted under this  
562 section. The office shall maintain copies of the credit or  
563 criminal results in the guardian's registration file. If the  
564 results of a credit or criminal investigation of a public or  
565 professional guardian have not been forwarded to the Statewide  
566 Public Guardianship Office by the investigating agency, the  
567 clerk of the court shall forward copies of the results of the  
568 investigations to the office upon receiving them. ~~If credit or~~  
569 ~~eriminal investigations are required, the court must consider~~  
570 ~~the results of the investigations before appointing a guardian.~~  
571 ~~Professional guardians and all employees of a professional~~  
572 ~~guardian who have a fiduciary responsibility to a ward, so~~  
573 ~~appointed, must resubmit, at their own expense, to an~~  
574 ~~investigation of credit history, and undergo level 1 background~~  
575 ~~screening as required under s. 435.03, at least every 2 years~~  
576 ~~after the date of their appointment. At any time, the court may~~  
577 ~~require guardians or their employees to submit to an~~  
578 ~~investigation of credit history and undergo level 1 background~~  
579 ~~screening as required under s. 435.03. The court must consider~~  
580 ~~the results of these investigations in reappointing a guardian.~~

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

586 (6)(2) The requirements of this section do ~~does~~ not apply  
587 to a professional guardian, or to the employees of a

588 professional guardian, that ~~which~~ is a trust company, a state  
 589 banking corporation or state savings association authorized and  
 590 qualified to exercise fiduciary powers in this state, or a  
 591 national banking association or federal savings and loan  
 592 association authorized and qualified to exercise fiduciary  
 593 powers in this state.

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

596 744.3145 Guardian education requirements.--

597 (4) Each person appointed by the court to be a guardian  
 598 must complete the required number of hours of instruction and  
 599 education within 4 months ~~1 year~~ after his or her appointment as  
 600 guardian. The instruction and education must be completed  
 601 through a course approved by the chief judge of the circuit  
 602 court and taught by a court-approved organization. Court-  
 603 approved organizations may include, but are not limited to,  
 604 community or junior colleges, guardianship organizations, and  
 605 the local bar association or The Florida Bar.

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

608 744.3215 Rights of persons determined incapacitated.--

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

611 (i) To receive ~~necessary~~ services and rehabilitation  
 612 necessary to maximize the quality of life.

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

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

618 (b) To vote.

619 (c) To personally apply for government benefits.

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

621 (e) To travel.

622 (f) To seek or retain employment.

623 Section 11. Subsections (2), (3), and (7) of section  
 624 744.331, Florida Statutes, are amended to read:

625 744.331 Procedures to determine incapacity.--

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

627 (a) When a court appoints an attorney for an alleged  
 628 incapacitated person, the court must appoint an attorney who is  
 629 included in the attorney registry compiled by the circuit's  
 630 Article V indigent services committee. Appointments must be made  
 631 on a rotating basis, taking into consideration conflicts arising  
 632 under this chapter.

633 ~~(b)(a)~~ The court shall appoint an attorney for each person  
 634 alleged to be incapacitated in all cases involving a petition  
 635 for adjudication of incapacity. The alleged incapacitated person  
 636 may substitute her or his own attorney for the attorney  
 637 appointed by the court, subject to court approval.

638 ~~(c)(b)~~ Any attorney representing an alleged incapacitated  
 639 person may not serve as guardian of the alleged incapacitated  
 640 person or as counsel for the guardian of the alleged  
 641 incapacitated person or the petitioner.

642 (d) Effective January 1, 2007, an attorney seeking to be  
 643 appointed by a court for incapacity and guardianship proceedings

644 must have completed a minimum of 8 hours of education in  
645 guardianship. A court may waive the initial training requirement  
646 for an attorney who has served as a court-appointed attorney in  
647 incapacity proceedings or as an attorney of record for guardians  
648 for not less than 3 years.

649 (3) EXAMINING COMMITTEE.--

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



672 furnishes, services or subsidies, directly or indirectly, to the  
673 person or the family of the person alleged to be incapacitated  
674 or for whom a guardianship is sought. A petitioner may not serve  
675 as a member of the examining committee. Members of the examining  
676 committee must be able to communicate, either directly or  
677 through an interpreter, in the language that the alleged  
678 incapacitated person speaks or to communicate in a medium  
679 understandable to the alleged incapacitated person if she or he  
680 is able to communicate. The clerk of the court shall send notice  
681 of the appointment to each person appointed no later than 3 days  
682 after the court's appointment.

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

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

693 (d) A member of an examining committee must complete a  
694 minimum of 4 hours of initial training. The person must complete  
695 2 hours of continuing education during each 2-year period after  
696 the initial training. The initial training and continuing  
697 education program must be developed under the supervision of the  
698 Statewide Public Guardianship Office, in consultation with the  
699 Florida Conference of Circuit Court Judges; the Elder Law and

700 the Real Property, Probate and Trust Law sections of The Florida  
 701 Bar; the Florida State Guardianship Association; and the Florida  
 702 Guardianship Foundation. The court may waive the initial  
 703 training requirement for a person who has served for not less  
 704 than 5 years on examining committees. If a person wishes to  
 705 obtain his or her continuing education on the Internet or by  
 706 watching a video course, the person must first obtain the  
 707 approval of the chief judge before taking an Internet or video  
 708 course.

709 (e)~~(b)~~ Each member of the examining committee shall  
 710 examine the person. Each ~~The~~ examining committee member must  
 711 ~~shall~~ determine the alleged incapacitated person's ability to  
 712 exercise those rights specified in s. 744.3215. In addition to  
 713 the examination, each ~~the~~ examining committee member must ~~shall~~  
 714 have access to, and may consider, previous examinations of the  
 715 person, including, but not limited to, habilitation plans,  
 716 school records, and psychological and psychosocial reports  
 717 voluntarily offered for use by the alleged incapacitated person.  
 718 Each member of the examining committee must ~~shall~~ submit a  
 719 report within 15 days after appointment.

720 (f)~~(e)~~ The examination of the alleged incapacitated person  
 721 must include a comprehensive examination, a report of which  
 722 shall be filed by the examining committee as part of its written  
 723 report. The comprehensive examination report should be an  
 724 essential element, but not necessarily the only element, used in  
 725 making a capacity and guardianship decision. The comprehensive  
 726 examination must include, if indicated:

- 727 1. A physical examination;

- 728           2. A mental health examination; and  
 729           3. A functional assessment.

730

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

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

735           1. To the extent possible, a diagnosis, prognosis, and  
 736 recommended course of treatment.

737           2. An evaluation of the alleged incapacitated person's  
 738 ability to retain her or his rights, including, without  
 739 limitation, the rights to marry; vote; contract; manage or  
 740 dispose of property; have a driver's license; determine her or  
 741 his residence; consent to medical treatment; and make decisions  
 742 affecting her or his social environment.

743           3. The results of the comprehensive examination and the  
 744 committee members' assessment of information provided by the  
 745 attending or family physician, if any.

746           4. A description of any matters with respect to which the  
 747 person lacks the capacity to exercise rights, the extent of that  
 748 incapacity, and the factual basis for the determination that the  
 749 person lacks that capacity.

750           5. The names of all persons present during the time the  
 751 committee member conducted his or her examination. If a person  
 752 other than the person who is the subject of the examination  
 753 supplies answers posed to the alleged incapacitated person, the  
 754 report must include the response and the name of the person  
 755 supplying the answer.

756           ~~6.5.~~ The signature of each member of the committee and the  
757 date and time that each member conducted his or her examination.

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

762           (7) FEES.--

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

766           (b) The fees awarded under paragraph (a) shall be paid by  
767 the guardian from the property of the ward or, if the ward is  
768 indigent, by the state. The state shall have a creditor's claim  
769 against the guardianship property for any amounts paid under  
770 this section. The state may file its claim within 90 days after  
771 the entry of an order awarding attorney ad litem fees. If the  
772 state does not file its claim within the 90-day period, the  
773 state is thereafter barred from asserting the claim. Upon  
774 petition by the state for payment of the claim, the court shall  
775 enter an order authorizing immediate payment out of the property  
776 of the ward. The state shall keep a record of the ~~such~~ payments.

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

780           Section 12. Subsection (4) of section 744.341, Florida  
781 Statutes, is renumbered as subsection (5) and amended, and a new  
782 subsection (4) is added to that section, to read:

783           744.341 Voluntary guardianship.--

784           (4) A guardian must include in the annual report filed  
 785 with the court a certificate from a licensed physician who  
 786 examined the ward not more than 90 days before the annual report  
 787 is filed with the court. The certificate must certify that the  
 788 ward is competent to understand the nature of the guardianship  
 789 and of the ward's authority to delegate powers to the voluntary  
 790 guardian.

791           ~~(5)~~(4) A voluntary guardianship may be terminated by the  
 792 ward by filing a notice with the court that the voluntary  
 793 guardianship is terminated. The notice must be accompanied by a  
 794 certificate from a licensed physician who has examined the ward  
 795 not more than 30 days before the ward filed the notice with the  
 796 court. The physician must certify that the ward is competent to  
 797 understand the implications of terminating the guardianship. A  
 798 copy of the notice and certificate must be served on all  
 799 interested persons.

800           Section 13. Subsection (9) is added to section 744.361,  
 801 Florida Statutes, to read:

802           744.361 Powers and duties of guardian.--

803           (9) A professional guardian must ensure that each of the  
 804 guardian's wards is personally visited by the guardian or one of  
 805 the guardian's professional staff at least once each calendar  
 806 quarter. During the personal visit, the guardian or the  
 807 guardian's professional staff person shall assess:

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

809           (b) The appropriateness of the ward's current living  
 810 situation.

811           (c) The need for any additional services and the necessity

812 for continuation of existing services, taking into consideration  
 813 all aspects of social, psychological, educational, direct  
 814 service, health, and personal care needs.

815  
 816 This subsection does not apply to a professional guardian who  
 817 has been appointed only as guardian of the property.

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

820 744.365 Verified inventory.--

821 (2) CONTENTS.--The verified inventory must include the  
 822 following:

823 (a) All property of the ward, real and personal, that has  
 824 come into the guardian's possession or knowledge, including a  
 825 statement of all encumbrances, liens, and other secured claims  
 826 on any item, any claims against the property, ~~and~~ any cause of  
 827 action accruing to the ward, and any trusts of which the ward is  
 828 a beneficiary.+

829 (b) The location of the real and personal property in  
 830 sufficient detail so that it may be clearly identified or  
 831 located. ~~+~~and

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

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

836 744.367 Duty to file annual guardianship report.--

837 (1) Unless the court requires filing on a calendar-year  
 838 basis, each guardian of the person shall file with the court an  
 839 annual guardianship plan within 90 days after the last day of

840 the anniversary month the letters of guardianship were signed,  
 841 and the plan must cover the coming fiscal year, ending on the  
 842 last day in such anniversary month. If the court requires  
 843 calendar-year filing, the guardianship plan must be filed on or  
 844 before April 1 of each year ~~within 90 days after the end of the~~  
 845 ~~calendar year.~~

846 (3) The annual guardianship report of a guardian of the  
 847 property must consist of an annual accounting, and the annual  
 848 report of a guardian of the person ~~of an incapacitated person~~  
 849 must consist of an annual guardianship plan. The annual report  
 850 shall be served on the ward, unless the ward is a minor ~~under~~  
 851 ~~the age of 14 years~~ or is totally incapacitated, and on the  
 852 attorney for the ward, if any. The guardian shall provide a copy  
 853 to any other person as the court may direct.

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

856 744.3675 Annual guardianship plan.--Each guardian of the  
 857 person must file with the court an annual guardianship plan  
 858 which updates information about the condition of the ward. The  
 859 annual plan must specify the current needs of the ward and how  
 860 those needs are proposed to be met in the coming year.

861 (1) Each plan for an adult ward must, if applicable,  
 862 include:

863 (a) Information concerning the residence of the ward,  
 864 including:

- 865 1. The ward's address at the time of filing the plan.†
- 866 2. The name and address of each place where the ward was  
 867 maintained during the preceding year.†

- 868           3. The length of stay of the ward at each place.;
- 869           4. A statement of whether the current residential setting
- 870 is best suited for the current needs of the ward.;~~and~~
- 871           5. Plans for ensuring during the coming year that the ward
- 872 is in the best residential setting to meet his or her needs.
- 873           (b) Information concerning the medical and mental health
- 874 conditions ~~condition~~ and treatment and rehabilitation needs of
- 875 the ward, including:
- 876           1. A resume of any professional medical treatment given to
- 877 the ward during the preceding year.;
- 878           2. The report of a physician who examined the ward no more
- 879 than 90 days before the beginning of the applicable reporting
- 880 period. The ~~Such~~ report must contain an evaluation of the ward's
- 881 condition and a statement of the current level of capacity of
- 882 the ward.;~~and~~
- 883           3. The plan for providing ~~provision of~~ medical, mental
- 884 health, and rehabilitative services in the coming year.
- 885           (c) Information concerning the social condition of the
- 886 ward, including:
- 887           1. The social and personal services currently used
- 888 ~~utilized~~ by the ward.;
- 889           2. The social skills of the ward, including a statement of
- 890 how well the ward communicates and maintains interpersonal
- 891 relationships. ~~with others;~~
- 892           ~~3. A description of the ward's activities at communication~~
- 893 ~~and visitation; and~~
- 894           ~~3.4.~~ The social needs of the ward.
- 895           (2) Each plan filed by the legal guardian of a minor must



896 include:  
 897 (a) Information concerning the residence of the minor,  
 898 including:  
 899 1. The minor's address at the time of filing the plan.  
 900 2. The name and address of each place the minor lived  
 901 during the preceding year.  
 902 (b) Information concerning the medical and mental health  
 903 conditions and treatment and rehabilitation needs of the minor,  
 904 including:  
 905 1. A resume of any professional medical treatment given to  
 906 the minor during the preceding year.  
 907 2. A report from the physician who examined the minor no  
 908 more than 180 days before the beginning of the applicable  
 909 reporting period that contains an evaluation of the minor's  
 910 physical and mental conditions.  
 911 3. The plan for providing medical services in the coming  
 912 year.  
 913 (c) Information concerning the education of the minor,  
 914 including:  
 915 1. A summary of the school progress report.  
 916 2. The social development of the minor, including a  
 917 statement of how well the minor communicates and maintains  
 918 interpersonal relationships.  
 919 3. The social needs of the minor.  
 920 (3)(2) Each plan for an adult ward must address the issue  
 921 of restoration of rights to the ward and include:  
 922 (a) A summary of activities during the preceding year that  
 923 which were designed to enhance increase the capacity of the

924 ward.†

925       (b) A statement of whether the ward can have any rights  
926 restored.†~~and~~

927       (c) A statement of whether restoration of any rights will  
928 be sought.

929       ~~(4)(3)~~ The court, in its discretion, may require  
930 reexamination of the ward by a physician at any time.

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

933       744.3678 Annual accounting.--

934       (2) The annual accounting must include:

935       (a) A full and correct account of the receipts and  
936 disbursements of all of the ward's property over which the  
937 guardian has control and a statement of the ward's property on  
938 hand at the end of the accounting period. This paragraph does  
939 not apply to any property or any trust of which the ward is a  
940 beneficiary but which is not under the control or administration  
941 of the guardian.

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

945       (3) The guardian must obtain a receipt, ~~or~~ canceled check,  
946 or other proof of payment for all expenditures and disbursements  
947 made on behalf of the ward. The guardian must preserve all  
948 evidence of payment ~~the receipts and canceled checks~~, along with  
949 other substantiating papers, for a period of 3 years after his  
950 or her discharge. The receipts, proofs of payment ~~checks~~, and  
951 substantiating papers need not be filed with the court but shall

952 be made available for inspection and review at the ~~such~~ time and  
 953 ~~in such~~ place and before the ~~such~~ persons as the court may ~~from~~  
 954 ~~time to time~~ order.

955 Section 18. Section 744.3679, Florida Statutes, is amended  
 956 to read:

957 744.3679 Simplified accounting procedures in certain  
 958 cases.--

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

965 (a) The original or a certified copy of the year-end  
 966 statement of the ward's account from the financial institution;  
 967 and

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

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

973 (2)~~(3)~~ The accounting allowed by subsection (1) is in lieu  
 974 of the accounting and auditing procedures under s. 744.3678(2)  
 975 ~~ss. 744.3678 and 744.368(1)(f)~~. However, any interested party  
 976 may seek judicial review as provided in s. 744.3685.

977 (3)~~(4)~~ The guardian need not be represented by an attorney  
 978 in order to file the annual accounting allowed by subsection  
 979 (1).

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

982 744.368 Responsibilities of the clerk of the circuit  
 983 court.--

984 (3) Within 90 days after the filing of the verified  
 985 inventory and accountings ~~initial or annual guardianship report~~  
 986 by a guardian of the property, the clerk shall audit the  
 987 verified inventory and ~~or~~ the accountings ~~annual accounting~~. The  
 988 clerk shall advise the court of the results of the audit.

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

991 744.441 Powers of guardian upon court approval.--After  
 992 obtaining approval of the court pursuant to a petition for  
 993 authorization to act, a plenary guardian of the property, or a  
 994 limited guardian of the property within the powers granted by  
 995 the order appointing the guardian or an approved annual or  
 996 amended guardianship report, may:

997 (19) Create or amend revocable or irrevocable trusts of  
 998 property of the ward's estate which may extend beyond the  
 999 disability or life of the ward in connection with estate, gift,  
 1000 income, or other tax planning or in connection with estate  
 1001 planning. The court shall retain oversight of the assets  
 1002 transferred to a trust, unless otherwise ordered by the court.

1003 Section 21. Section 744.442, Florida Statutes, is created  
 1004 to read:

1005 744.442 Delegation of authority.--

1006 (1) A guardian may designate a surrogate guardian to  
 1007 exercise the powers of the guardian if the guardian is

1008 unavailable to act. A person designated as a surrogate guardian  
 1009 under this section must be a professional guardian.

1010 (2)(a) A guardian must file a petition with the court  
 1011 requesting permission to designate a surrogate guardian.

1012 (b) If the court approves the designation, the order must  
 1013 specify the name and business address of the surrogate guardian  
 1014 and the duration of appointment, which may not exceed 30 days.

1015 The court may extend the appointment for good cause shown. The  
 1016 surrogate guardian may exercise all powers of the guardian  
 1017 unless limited by order of the court. The surrogate guardian  
 1018 must file with the court an oath swearing or affirming that he  
 1019 or she will faithfully perform the duties delegated. The court  
 1020 may require the surrogate guardian to post a bond.

1021 (3) This section does not limit the responsibility of the  
 1022 guardian to the ward and to the court. The guardian is liable  
 1023 for the acts of the surrogate guardian. The guardian may  
 1024 terminate the authority of the surrogate guardian by filing a  
 1025 written notice of the termination with the court.

1026 (4) The surrogate guardian is subject to the jurisdiction  
 1027 of the court as if appointed to serve as guardian.

1028 Section 22. Paragraphs (c), (e), and (f) of subsection (2)  
 1029 and subsection (4) of section 744.464, Florida Statutes, are  
 1030 amended to read:

1031 744.464 Restoration to capacity.--

1032 (2) SUGGESTION OF CAPACITY.--

1033 (c) The court shall immediately send notice of the filing  
 1034 of the suggestion of capacity to the ward, the guardian, the  
 1035 attorney for the ward, if any, ~~the state attorney,~~ and any other

1036 interested persons designated by the court. Formal notice must  
 1037 be served on the guardian. Informal notice may be served on  
 1038 other persons. Notice need not be served on the person who filed  
 1039 the suggestion of capacity.

1040 (e) If an objection is timely filed, or if the medical  
 1041 examination suggests that full restoration is not appropriate,  
 1042 the court shall set the matter for hearing. If the ward does not  
 1043 have an attorney, the court shall appoint one to represent the  
 1044 ward.

1045 (f) Notice of the hearing and copies of the objections and  
 1046 medical examination reports shall be served upon the ward, the  
 1047 ward's attorney, the guardian, ~~the state attorney,~~ the ward's  
 1048 next of kin, and any other interested persons as directed by the  
 1049 court.

1050 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~  
 1051 ~~CAPACITY. -- Notwithstanding this section, a suggestion of~~  
 1052 ~~capacity may not be filed within 90 days after an adjudication~~  
 1053 ~~of incapacity or denial of restoration, unless good cause is~~  
 1054 ~~shown.~~

1055 Section 23. Paragraph (a) of subsection (19) of section  
 1056 744.474, Florida Statutes, is amended, and paragraph (b) of that  
 1057 subsection is redesignated as subsection (20) of that section  
 1058 and amended, to read:

1059 744.474 Reasons for removal of guardian.--A guardian may  
 1060 be removed for any of the following reasons, and the removal  
 1061 shall be in addition to any other penalties prescribed by law:

1062 (19) Upon a showing by a person who did not receive notice  
 1063 of the petition for adjudication of incapacity, when such notice

1064 is required, or who is related to the ward within the  
 1065 relationships specified for nonresident relatives in ss.  
 1066 744.309(2) and 744.312(2) and who has not previously been  
 1067 rejected by the court as a guardian that:

1068 ~~(a)~~ the current guardian is not a family member; and  
 1069 subsection (20) applies.

1070 ~~(20)(b)~~ Upon a showing that removal of the current  
 1071 guardian is in the best interest of the ward, the court may  
 1072 remove the current guardian and appoint the petitioner, or such  
 1073 person as the court deems in the best interest of the ward,  
 1074 either as guardian of the person or of the property, or both.

1075 Section 24. Section 744.511, Florida Statutes, is amended  
 1076 to read:

1077 744.511 Accounting upon removal.--A removed guardian shall  
 1078 file with the court a true, complete, and final report of his or  
 1079 her guardianship within 20 days after removal and shall serve a  
 1080 copy on the successor guardian and the ward, unless the ward is  
 1081 a minor ~~under 14 years of age~~ or has been determined to be  
 1082 totally incapacitated.

1083 Section 25. Section 744.527, Florida Statutes, is amended  
 1084 to read:

1085 744.527 Final reports and application for discharge;  
 1086 hearing.--

1087 (1) When the court terminates the guardianship for any of  
 1088 the reasons set forth in s. 744.521, the guardian shall promptly  
 1089 file his or her final report. If the ward has died, the guardian  
 1090 must file a final report with the court no later than 45 days  
 1091 after he or she has been served with letters of administration

1092 or letters of curatorship. If no objections are filed and if it  
 1093 appears that the guardian has made full and complete  
 1094 distribution to the person entitled and has otherwise faithfully  
 1095 discharged his or her duties, the court shall approve the final  
 1096 report. If objections are filed, the court shall conduct a  
 1097 hearing in the same manner as provided for a hearing on  
 1098 objections to annual guardianship reports.

1099 (2) The guardian applying for discharge may ~~is authorized~~  
 1100 ~~to~~ retain from the funds in his or her possession a sufficient  
 1101 amount to pay the final costs of administration, including  
 1102 guardian and attorney's fees regardless of the death of the  
 1103 ward, accruing between the filing of his or her final returns  
 1104 and the order of discharge.

1105 Section 26. Subsection (3) of section 744.528, Florida  
 1106 Statutes, is amended to read:

1107 744.528 Discharge of guardian named as personal  
 1108 representative.--

1109 (3) Any interested person may file a notice of ~~The court~~  
 1110 ~~shall set~~ a hearing on any objections filed by the  
 1111 beneficiaries. Notice of the hearing must ~~shall~~ be served upon  
 1112 the guardian, beneficiaries of the ward's estate, and any other  
 1113 person to whom the court directs service. If a notice of hearing  
 1114 on the objections is not served within 90 days after filing of  
 1115 the objections, the objections are deemed abandoned.

1116 Section 27. Subsection (6) of section 744.708, Florida  
 1117 Statutes, is amended to read:

1118 744.708 Reports and standards.--

1119 (6) A ~~The~~ public guardian shall ensure that each of the



1120 guardian's wards is personally visited ~~ward is seen~~ by the  
 1121 public guardian or by one of the guardian's a professional staff  
 1122 ~~person~~ at least once each calendar quarter ~~four times a year~~.  
 1123 During this personal visit, the public guardian or the  
 1124 professional staff person shall assess:

1125 (a) The ward's physical appearance and condition.  
 1126 (b) The appropriateness of the ward's current living  
 1127 situation.

1128 (c) The need for any additional services and the necessity  
 1129 for continuation of existing services, taking into consideration  
 1130 all aspects of social, psychological, educational, direct  
 1131 service, health, and personal care needs.

1132 Section 28. Paragraph (a) of subsection (5) of section  
 1133 765.101, Florida Statutes, is amended to read:

1134 765.101 Definitions.--As used in this chapter:

1135 (5) "Health care decision" means:

1136 (a) Informed consent, refusal of consent, or withdrawal of  
 1137 consent to any and all health care, including life-prolonging  
 1138 procedures and mental health treatment, unless otherwise stated  
 1139 in the advance directives.

1140 Section 29. Section 28.345, Florida Statutes, is amended  
 1141 to read:

1142 28.345 Exemption from court-related fees and  
 1143 charges.--Notwithstanding any other ~~provision of this chapter or~~  
 1144 law to the contrary, judges and those court staff acting on  
 1145 behalf of judges, state attorneys, guardians ad litem, public  
 1146 guardians, attorneys ad litem, court-appointed private counsel,  
 1147 and public defenders, acting in their official capacity, and

1148 state agencies, are exempt from all court-related fees and  
 1149 charges assessed by the clerks of the circuit courts.

1150 Section 30. Paragraph (c) of subsection (8) of section  
 1151 121.091, Florida Statutes, is amended to read:

1152 121.091 Benefits payable under the system.--Benefits may  
 1153 not be paid under this section unless the member has terminated  
 1154 employment as provided in s. 121.021(39)(a) or begun  
 1155 participation in the Deferred Retirement Option Program as  
 1156 provided in subsection (13), and a proper application has been  
 1157 filed in the manner prescribed by the department. The department  
 1158 may cancel an application for retirement benefits when the  
 1159 member or beneficiary fails to timely provide the information  
 1160 and documents required by this chapter and the department's  
 1161 rules. The department shall adopt rules establishing procedures  
 1162 for application for retirement benefits and for the cancellation  
 1163 of such application when the required information or documents  
 1164 are not received.

1165 (8) DESIGNATION OF BENEFICIARIES.--

1166 (c) Notwithstanding the member's designation of benefits  
 1167 to be paid through a trust to a beneficiary that is a natural  
 1168 person as provided in s. 121.021(46), and notwithstanding the  
 1169 provisions of the trust, benefits shall be paid directly to the  
 1170 beneficiary if the ~~such~~ person is no longer a minor or an  
 1171 incapacitated person as defined in s. 744.102~~(11)~~ and ~~(12)~~.

1172 Section 31. Paragraph (c) of subsection (20) of section  
 1173 121.4501, Florida Statutes, is amended to read:

1174 121.4501 Public Employee Optional Retirement Program.--

1175 (20) DESIGNATION OF BENEFICIARIES.--

1176 (c) Notwithstanding the participant's designation of  
 1177 benefits to be paid through a trust to a beneficiary that is a  
 1178 natural person, and notwithstanding the provisions of the trust,  
 1179 benefits shall be paid directly to the beneficiary if the ~~such~~  
 1180 person is no longer a minor or an incapacitated person as  
 1181 defined in s. 744.102~~(11)~~ and ~~(12)~~.

1182 Section 32. Subsection (1) and paragraphs (b), (d), and  
 1183 (f) of subsection (4) of section 709.08, Florida Statutes, are  
 1184 amended to read:

1185 709.08 Durable power of attorney.--

1186 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable  
 1187 power of attorney is a written power of attorney by which a  
 1188 principal designates another as the principal's attorney in  
 1189 fact. The durable power of attorney must be in writing, must be  
 1190 executed with the same formalities required for the conveyance  
 1191 of real property by Florida law, and must contain the words:  
 1192 "This durable power of attorney is not affected by subsequent  
 1193 incapacity of the principal except as provided in s. 709.08,  
 1194 Florida Statutes"; or similar words that show the principal's  
 1195 intent that the authority conferred is exercisable  
 1196 notwithstanding the principal's subsequent incapacity, except as  
 1197 otherwise provided by this section. The durable power of  
 1198 attorney is exercisable as of the date of execution; however, if  
 1199 the durable power of attorney is conditioned upon the  
 1200 principal's lack of capacity to manage property as defined in s.  
 1201 744.102~~(12)~~~~(11)~~(a), the durable power of attorney is exercisable  
 1202 upon the delivery of affidavits in paragraphs (4)(c) and (d) to  
 1203 the third party.

1204 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;  
 1205 AFFIDAVITS.--

1206 (b) Any third party may rely upon the authority granted in  
 1207 a durable power of attorney that is conditioned on the  
 1208 principal's lack of capacity to manage property as defined in s.  
 1209 744.102(12)(~~11~~)(a) only after receiving the affidavits provided  
 1210 in paragraphs (c) and (d), and such reliance shall end when the  
 1211 third party has received notice as provided in subsection (5).

1212 (d) A determination that a principal lacks the capacity to  
 1213 manage property as defined in s. 744.102(12)(~~11~~)(a) must be made  
 1214 and evidenced by the affidavit of a physician licensed to  
 1215 practice medicine pursuant to chapters 458 and 459 as of the  
 1216 date of the affidavit. A judicial determination that the  
 1217 principal lacks the capacity to manage property pursuant to  
 1218 chapter 744 is not required prior to the determination by the  
 1219 physician and the execution of the affidavit. For purposes of  
 1220 this section, the physician executing the affidavit must be the  
 1221 primary physician who has responsibility for the treatment and  
 1222 care of the principal. The affidavit executed by a physician  
 1223 must state where the physician is licensed to practice medicine,  
 1224 that the physician is the primary physician who has  
 1225 responsibility for the treatment and care of the principal, and  
 1226 that the physician believes that the principal lacks the  
 1227 capacity to manage property as defined in s. 744.102(12)(~~11~~)(a).  
 1228 The affidavit may, but need not, be in the following form:

1229  
 1230 STATE OF \_\_\_\_\_  
 1231 COUNTY OF \_\_\_\_\_

1232  
1233  
1234  
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Before me, the undersigned authority, personally appeared  
(name of physician) , Affiant, who swore or affirmed that:

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

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

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

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

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

(Signature of Notary Public-State of Florida)

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

Personally Known OR Produced Identification

(Type of Identification Produced)

(f) A third party may not rely on the authority granted in

1260 a durable power of attorney conditioned on the principal's lack  
 1261 of capacity to manage property as defined in s.  
 1262 744.102(12)(~~11~~)(a) when any affidavit presented has been  
 1263 executed more than 6 months prior to the first presentation of  
 1264 the durable power of attorney to the third party.

1265 Section 33. Subsection (3) of section 744.1085, Florida  
 1266 Statutes, is amended to read:

1267 744.1085 Regulation of professional guardians;  
 1268 application; bond required; educational requirements.--

1269 (3) Each professional guardian defined in s.  
 1270 744.102(17)(~~16~~) and public guardian must receive a minimum of 40  
 1271 hours of instruction and training. Each professional guardian  
 1272 must receive a minimum of 16 hours of continuing education every  
 1273 2 calendar years after the year in which the initial 40-hour  
 1274 educational requirement is met. The instruction and education  
 1275 must be completed through a course approved or offered by the  
 1276 Statewide Public Guardianship Office. The expenses incurred to  
 1277 satisfy the educational requirements prescribed in this section  
 1278 may not be paid with the assets of any ward. This subsection  
 1279 does not apply to any attorney who is licensed to practice law  
 1280 in this state.

1281 Section 34. For the purpose of incorporating the amendment  
 1282 made by this act to section 744.3215, Florida Statutes, in a  
 1283 reference thereto, subsection (4) of section 117.107, Florida  
 1284 Statutes, is reenacted to read:

1285 117.107 Prohibited acts.--

1286 (4) A notary public may not take the acknowledgment of or  
 1287 administer an oath to a person whom the notary public actually

1288 knows to have been adjudicated mentally incapacitated by a court  
 1289 of competent jurisdiction, where the acknowledgment or oath  
 1290 necessitates the exercise of a right that has been removed  
 1291 pursuant to s. 744.3215(2) or (3), and where the person has not  
 1292 been restored to capacity as a matter of record.

1293 Section 35. Subsection (13) of section 318.18, Florida  
 1294 Statutes, is amended to read:

1295 318.18 Amount of civil penalties.--The penalties required  
 1296 for a noncriminal disposition pursuant to s. 318.14 are as  
 1297 follows:

1298 (13) In addition to any penalties imposed for noncriminal  
 1299 traffic infractions under ~~pursuant to~~ this chapter or imposed  
 1300 for criminal violations listed in s. 318.17, notwithstanding s.  
 1301 318.121, a board of county commissioners or any unit of local  
 1302 government which is consolidated as provided by s. 9, Art. VIII  
 1303 of the State Constitution of 1885, as preserved by s. 6(e), Art.  
 1304 VIII of the Constitution of 1968:

1305 (a) May impose by ordinance a surcharge of up to \$15 for  
 1306 any infraction or violation to fund state court facilities. The  
 1307 court may ~~shall~~ not waive this surcharge. Up to 25 percent of  
 1308 the revenue from such surcharge may be used to support local law  
 1309 libraries provided that the county or unit of local government  
 1310 provides a level of service equal to that provided prior to July  
 1311 1, 2004, which shall include the continuation of library  
 1312 facilities located in or near the county courthouse or annexes.

1313 (b) That imposed increased fees or service charges by  
 1314 ordinance under s. 28.2401, s. 28.241, or s. 34.041 for the  
 1315 purpose of securing payment of the principal and interest on

1316 bonds issued by the county before July 1, 2003, to finance state  
 1317 court facilities, may impose by ordinance a surcharge for any  
 1318 infraction or violation for the exclusive purpose of securing  
 1319 payment of the principal and interest on bonds issued by the  
 1320 county before July 1, 2003, to fund state court facilities until  
 1321 the date of stated maturity. The court may ~~shall~~ not waive this  
 1322 surcharge. The ~~Such~~ surcharge may not exceed an amount per  
 1323 violation calculated as the quotient of the maximum annual  
 1324 payment of the principal and interest on the bonds as of July 1,  
 1325 2003, divided by the number of traffic citations for county  
 1326 fiscal year 2002-2003 certified as paid by the clerk of the  
 1327 court of the county. The ~~Such~~ quotient shall be rounded up to  
 1328 the next highest dollar amount. The bonds may be refunded only  
 1329 if savings will be realized on payments of debt service and the  
 1330 refunding bonds are scheduled to mature on the same date or  
 1331 before the bonds being refunded.

1332 (c) May impose an additional \$15 surcharge to fund the  
 1333 county's participation in the public guardianship program under  
 1334 chapter 744. Imposition of this surcharge must be by vote of  
 1335 two-thirds of the board of county commissioners or after a  
 1336 referendum approved by the electors of the county. Before  
 1337 imposing the surcharge, the county commission must demonstrate  
 1338 that available revenue sources are insufficient to fund such  
 1339 participation. The court may not waive this surcharge.

1340  
 1341 A county may not impose ~~both~~ of the surcharges authorized under  
 1342 both paragraphs (a) and (b) concurrently. The clerk of court  
 1343 shall report, no later than 30 days after the end of the



1344 quarter, the amount of funds collected under this subsection  
 1345 during each quarter of the fiscal year. The clerk shall submit  
 1346 the report, in a format developed by the Office of State Courts  
 1347 Administrator, to the chief judge of the circuit, the Governor,  
 1348 the President of the Senate, and the Speaker of the House of  
 1349 Representatives.

1350 Section 36. Section 938.065, Florida Statutes, is created  
 1351 to read:

1352 938.065 Additional cost for public guardianship  
 1353 programs.--

1354 (1) In addition to any fine prescribed by law for any  
 1355 misdemeanor offense, there is assessed as a court cost an  
 1356 additional surcharge of \$18 on each fine, which shall be imposed  
 1357 by each county and circuit court and collected by the clerk of  
 1358 the court together with the fine.

1359 (2) The clerk of the court shall collect and forward, on a  
 1360 monthly basis, all costs assessed under this section, less \$3  
 1361 per assessment as a service charge to be retained by the clerk,  
 1362 to the Department of Revenue for deposit into the General  
 1363 Revenue Fund. The funds collected shall be used exclusively to  
 1364 fund public guardianship programs in this state.

1365 Section 37. This act shall take effect July 1, 2006.