

By Senator Aronberg

27-00153A-08

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1 A bill to be entitled

2 An act relating to summary guardianship; creating s.
3 394.45983, F.S.; establishing summary guardianship for
4 persons with mental illness; providing for a petition,
5 notice, hearing, and counsel for appointing a summary
6 guardian; providing for a court order; providing the
7 powers and duties of a summary guardian; providing for
8 court costs; creating s. 394.45985, F.S.; specifying that
9 a person with mental illness who has met certain criteria
10 may not be presumed to be incapacitated for the purpose of
11 appointing a guardian; creating s. 744.3086, F.S.;
12 providing that a summary guardian may be appointed without
13 an adjudication of incapacity; providing an effective
14 date.

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

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18 Section 1. Section 394.45983, Florida Statutes, is created
19 to read:

20 394.45983 Summary guardian.--

21 (1) APPOINTMENT.--A circuit court may appoint a summary
22 guardian, without an adjudication of incapacity, for a person
23 with mental illness if the person lacks the capacity to do some,
24 but not all, of the tasks necessary to care for his or her
25 person, property, or estate or if the person has voluntarily
26 petitioned for the appointment of a summary guardian. Except as
27 otherwise specified, the proceeding shall be governed by the
28 Florida Rules of Civil Procedure.

29 (2) PETITION.--A petition to appoint a summary guardian for

27-00153A-08

20081124__

30 a person with mental illness may be executed by an adult who is a
31 resident of this state. The petition must be verified and must:

32 (a) State the name, age, and present address of the
33 petitioner and his or her relationship to the person with mental
34 illness;

35 (b) State the name, age, county of residence, and present
36 address of the person with mental illness;

37 (c) Allege that the petitioner believes that the person
38 with mental illness needs a summary guardian and specify the
39 factual information on which such belief is based;

40 (d) Specify the exact areas in which the person lacks the
41 capacity to make informed decisions about his or her care and
42 treatment services or to meet the essential requirements for his
43 or her physical health or safety;

44 (e) Specify the legal disabilities to which the person is
45 subject; and

46 (f) State the name of the proposed summary guardian, the
47 relationship of that person to the person with mental illness,
48 and the reason why a summary guardian should be appointed. If a
49 willing and qualified summary guardian cannot be located, the
50 petition must so state.

51 (3) NOTICE.--

52 (a) Notice of the filing of the petition must be given to
53 the person with mental illness, both verbally and in writing, in
54 the language of the person and in English. Notice must also be
55 given to the person's next of kin and to other persons as the
56 court directs. A copy of the petition to appoint a summary
57 guardian must be served with the notice.

58 (b) The notice must state that a hearing will be held to

27-00153A-08

20081124__

59 inquire into the capacity of the person with mental illness as
60 described in the petition. The notice must also state the date of
61 the hearing on the petition.

62 (c) The notice must state that the person with mental
63 illness has the right to be represented by counsel of his or her
64 own choice and that if the person cannot afford an attorney, the
65 court will appoint one.

66 (4) COUNSEL.--

67 (a) Every person with mental illness who is the subject of
68 a petition to appoint a summary guardian must be represented by
69 an attorney of his or her choice.

70 (b) If the person cannot afford an attorney, the court
71 shall appoint one. The court shall appoint counsel if no
72 appearance has been filed within 10 business days before the
73 hearing.

74 (5) HEARING.--

75 (a) Upon the filing of the petition to appoint a summary
76 guardian, the court shall set a date for holding a hearing on the
77 petition. The hearing must be held as soon as practicable after
78 the petition is filed, but a reasonable delay for the purpose of
79 investigation, discovery, or procuring counsel or witnesses may
80 be granted as necessary.

81 (b) The hearing must be held at the time and place
82 specified in the notice of hearing and must be conducted in a
83 manner consistent with due process.

84 (c) The person with mental illness has the right to be
85 present at the hearing and shall be present unless good cause to
86 exclude the person can be shown. The person with mental illness
87 has the right to remain silent, to present evidence, to call and

27-00153A-08

20081124__

88 cross-examine witnesses, and to have the hearing open or closed,
89 as the person chooses.

90 (d) At the hearing, the court shall receive and consider
91 all reports relevant to the person's mental illness, including
92 the person's clinical record, psychiatric evaluation, and other
93 professional reports documenting the person's condition and needs
94 deemed necessary for his or her well-being.

95 (e) The Florida Evidence Code, chapter 90, applies at the
96 hearing. The burden of proof must be by clear and convincing
97 evidence.

98 (6) COURT ORDER.--If the court finds that the person with
99 mental illness requires the appointment of a summary guardian,
100 the court shall enter a written order appointing the guardian and
101 containing the findings of facts and conclusions of law on which
102 the court made its decision, including:

103 (a) The nature and scope of the person's incapacity;

104 (b) The exact areas in which the individual lacks capacity
105 to make informed decisions about care and treatment services or
106 to meet the essential requirements for his or her physical health
107 and safety;

108 (c) The specific legal disabilities to which the person
109 with mental illness is subject; and

110 (d) The powers, duties, and responsibilities of the summary
111 guardian, including bonding of the summary guardian as provided
112 by s. 744.351.

113 (7) LEGAL RIGHTS.--A person with mental illness for whom a
114 summary guardian has been appointed retains all legal rights
115 except those that have been specifically granted to the summary
116 guardian.

27-00153A-08

20081124__

117 (8) POWERS AND DUTIES.--A summary guardian for a person
118 with mental illness must be a person or corporation qualified to
119 act as guardian, and has the same powers, duties, and
120 responsibilities required of a guardian under chapter 744 or
121 those defined by a court order issued under this section.

122 However, a summary guardian is:

123 (a) Exempted from rule 5.030, Florida Probate Rules; and

124 (b) Not required to file an initial guardianship report
125 under s. 744.362, an initial guardianship plan under s 744.363,
126 an annual plan under s. 744.3675, or an annual accounting under
127 s. 744.3678 if the court determines that the person with mental
128 illness:

129 1. Receives income only from supplemental or social
130 security disability benefits and the summary guardian is the
131 person's representative payee for those benefits; and

132 2. Is receiving mental health services and has a clinical
133 record with a service provider.

134 (9) COURT COSTS.--In all proceedings under this section,
135 the clerk of the circuit court is entitled to the service charges
136 as provided by law, including the cost of recording the petition,
137 bond, and decree and issuing an order of summary guardianship and
138 letters, if any.

139 Section 2. Section 394.45985, Florida Statutes, is created
140 to read:

141 394.45985 Appointment of a guardian.--A person with mental
142 illness may not be presumed incapacitated for the purposes of
143 appointing a guardian under chapter 744 solely due to a
144 determination that the person has met the criteria for
145 involuntary examination under s. 394.463, involuntary outpatient

27-00153A-08

20081124__

146 placement under s. 394.4655, involuntary inpatient placement
147 under s. 394.467, appointment of a guardian advocate under s.
148 394.4598, or the appointment of a summary guardian under s.
149 394.45983. A determination of incapacity and the appointment of a
150 guardian must be conducted in a separate proceeding according to
151 the procedures and requirements of chapter 744 and the Florida
152 Probate Rules.

153 Section 3. Section 744.3086, Florida Statutes, is created
154 to read:

155 744.3086 Summary guardians.--A circuit court may appoint a
156 summary guardian pursuant to s. 394.45985, without an
157 adjudication of incapacity, for a person with mental illness if
158 the person lacks the capacity to do some, but not all, of the
159 tasks necessary to care for his or her person, property, or
160 estate, or if the person has voluntarily petitioned for the
161 appointment of a summary guardian. Unless otherwise specified,
162 the proceeding shall be governed by the Florida Probate Rules. In
163 accordance with the legislative intent of this chapter, courts
164 are encouraged to consider appointing a summary guardian, when
165 appropriate, as a less restrictive form of guardianship.

166 Section 4. This act shall take effect July 1, 2008.