

By Senator Crist

12-00397A-08

2008688__

1 A bill to be entitled

2 An act relating to guardian advocates for persons with
3 developmental disabilities; amending s. 393.12, F.S.;
4 providing that the guardian advocate need not be
5 represented by an attorney; providing a list of persons
6 from which the court must select a guardian advocate;
7 revising the requirements for the petition seeking the
8 appointment of a guardian advocate to exclude the name of
9 the proposed guardian advocate; modifying the persons to
10 whom a notice of the filing of the petition must be given
11 to include family members; requiring the court's order to
12 name the guardian advocate and the reasons why the
13 advocate was selected; modifying who may be appointed
14 counsel to a person with developmental disabilities;
15 including the office of criminal conflict and civil
16 regional counsel; revising the powers and duties of the
17 guardian advocate with respect to financial accounting
18 requirements; amending s. 393.13, F.S.; conforming a
19 cross-reference; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 393.12, Florida Statutes, is amended to
24 read:

25 393.12 Capacity; appointment of guardian advocate.--

26 (1) CAPACITY.--

27 (a) ~~The issue of capacity shall be separate and distinct~~
28 ~~from a determination of the appropriateness of admission to~~
29 ~~nonresidential services or residential care for a condition of~~

12-00397A-08

2008688__

30 ~~developmental disabilities. A No person with a developmental~~
31 ~~disability may not shall~~ be presumed incapacitated solely by
32 reason of his or her acceptance in nonresidential services or
33 admission to residential care and may not; ~~nor shall any such~~
34 ~~person~~ be denied the full exercise of all legal rights guaranteed
35 to citizens of this state and of the United States.

36 (b) The determination of incapacity ~~issue of capacity~~ of a
37 person with developmental disabilities and the appointment of a
38 guardian must shall be conducted ~~determined~~ in a separate
39 proceeding according to the procedures and requirements of
40 chapter 744 and the Florida Probate Rules.

41 (c) A person being considered for or selected to be a
42 guardian advocate need not be represented by an attorney unless
43 required by the court.

44 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.--

45 (a) ~~Conditions.--~~ A circuit probate court may appoint a
46 guardian advocate, without an adjudication of incapacity, for a
47 person with developmental disabilities, if the person lacks the
48 capacity to do some, but not all, of the tasks necessary to care
49 for his or her person, property, or estate or if the person has
50 voluntarily petitioned for the appointment of a guardian
51 advocate. Except as otherwise specified, the proceeding shall be
52 governed by the Florida Rules of Civil Procedure.

53 (b) In selecting a guardian advocate, the court shall give
54 preference to a health care surrogate if one has already been
55 designated by the person. If the person has not previously
56 selected a health care surrogate or except for good cause
57 documented in the court record, the selection must be made from
58 the following persons, if willing and able, in the following

12-00397A-08

2008688__

59 order:

- 60 1. The person's spouse.
61 2. An adult child of the person.
62 3. A parent of the person.
63 4. An adult sibling of the person.
64 5. A grandparent of the person.
65 6. An adult next of kin of the person, other than the
66 persons listed in subparagraphs 1.-5., who has an active
67 relationship with the person.
68 7. An adult friend of the person.
69 8. A natural person or corporation qualified to serve as a
70 guardian.

71 (3) ~~(b)~~ PETITION.--A petition to appoint a guardian advocate
72 for a person with developmental disabilities may be executed by
73 an adult person who is a resident of this state. The petition
74 must ~~shall~~ be verified and must ~~shall~~:

75 (a) ~~1.~~ State the name, age, and present address of the
76 petitioner and his or her relationship to the person with
77 developmental disabilities;

78 (b) ~~2.~~ State the name, age, county of residence, and present
79 address of the person with developmental disabilities;

80 (c) ~~3.~~ Allege that the petitioner believes that the person
81 needs a guardian advocate and specify the factual information on
82 which such belief is based;

83 (d) ~~4.~~ Specify the exact areas in which the person lacks the
84 capacity to make informed decisions about his or her care and
85 treatment services or to meet the essential requirements for his
86 or her physical health or safety;

87 (e) ~~5.~~ Specify the legal disabilities to which the person is

12-00397A-08

2008688__

88 subject; and

89 ~~(f)6.~~ State the names, relationships, and addresses of the
90 persons listed in paragraph (2) (b), so far as is known ~~name of~~
91 ~~the proposed guardian advocate, the relationship of that person~~
92 ~~to the person with developmental disabilities, and the reason why~~
93 ~~this person should be appointed. If a willing and qualified~~
94 ~~guardian advocate cannot be located, the petition shall so state.~~

95 ~~(4)(e)~~ NOTICE.--

96 ~~(a)1.~~ Notice of the filing of the petition must ~~shall~~ be
97 given to the person with developmental disabilities, both
98 verbally and in writing, in the language of the person and in
99 English individual and his or her parent or parents. The notice
100 ~~shall be given both verbally and in writing in the language of~~
101 ~~the person and in English.~~ Notice must ~~shall~~ also be given to the
102 persons listed in subparagraphs (2) (b)1.-6. and to such other
103 persons as the court may direct. A copy of the petition to
104 appoint a guardian advocate must ~~shall~~ be served with the notice.

105 ~~(b)2.~~ The notice must ~~shall~~ state that a hearing will be
106 held ~~shall be set~~ to inquire into the capacity of the person with
107 developmental disabilities to exercise the rights enumerated in
108 the petition. The notice must ~~shall~~ also state the date of the
109 hearing on the petition.

110 ~~(c)3.~~ The notice must ~~shall~~ state that the person
111 individual with developmental disabilities has the right to be
112 represented by counsel of his or her own choice and that if the
113 person individual cannot afford an attorney, the court shall
114 appoint one.

115 ~~(5)(d)~~ COUNSEL.--The court shall appoint an attorney to
116 represent a person with developmental disabilities who is the

12-00397A-08

2008688__

117 subject of a petition to appoint a guardian advocate. The person
118 with developmental disabilities may substitute his or her own
119 attorney for the attorney appointed by the court.

120 (a) If the court appoints the attorney:

121 1. The court shall appoint the office of criminal conflict
122 and civil regional counsel or a private attorney as prescribed in
123 s. 27.511(6). A private attorney shall be selected from the
124 attorney registry compiled pursuant to s. 27.40.

125 2. The attorney must have completed a minimum of 8 hours of
126 education in guardianship. The court may waive this requirement
127 for an attorney who has served as a court-appointed attorney in
128 guardian advocate proceedings or as an attorney of record for
129 guardian advocates for at least 3 years.

130 (b) An attorney representing a person with developmental
131 disabilities may not also serve as the guardian advocate of the
132 person, as counsel for the guardian advocate, or as counsel for
133 the person petitioning for the appointment of a guardian
134 advocate.

135 ~~1. Every person with developmental disabilities who is the~~
136 ~~subject of a petition to appoint a guardian advocate shall be~~
137 ~~represented by counsel.~~

138 ~~2. Every person with developmental disabilities has the~~
139 ~~right to be represented by counsel of his or her own choice. If~~
140 ~~the person cannot afford an attorney, the court shall appoint one~~
141 ~~to represent the person. The court shall appoint counsel if no~~
142 ~~appearance has been filed within 10 working days of the hearing.~~

143 ~~(6)(e) HEARING.--~~

144 ~~(a)1.~~ Upon the filing of the petition to appoint a guardian
145 advocate, the court shall set a date for holding a hearing on

12-00397A-08

2008688__

146 ~~upon which~~ the petition ~~shall be heard~~. The A hearing must on the
147 ~~petition shall~~ be held as soon as practicable after the petition
148 is filed, but a reasonable delay for the purpose of
149 investigation, discovery, or procuring counsel or witnesses may
150 ~~shall~~ be granted.

151 (b)2. The hearing must be held ~~shall be conducted~~ at the
152 time and place specified in the notice of hearing and must. ~~The~~
153 ~~hearing shall~~ be conducted in a manner consistent with due
154 process.

155 (c)3. The person with developmental disabilities individual
156 has the right to be present at the hearing and shall be present
157 unless good cause to exclude the individual can be shown. The
158 person individual has the right to remain silent, to present
159 evidence, to call and cross-examine witnesses, and to have the
160 hearing open or closed, as the person may choose.

161 (d)4. At the hearing, the court shall receive and consider
162 all reports relevant to the person's disabilities, including, but
163 not limited to, the person's current individual family or
164 individual support plan, the individual education plan, and other
165 professional reports documenting the condition and needs of the
166 person individual.

167 (e)5. The Florida Evidence Code, chapter 90, applies ~~shall~~
168 ~~apply~~ at the hearing. The burden of proof must ~~shall~~ be by clear
169 and convincing evidence.

170 (7)(f) COURT ORDER ~~determining the appointment of a~~
171 ~~guardian advocate~~.--If the court finds the person with
172 developmental disabilities requires the appointment of a guardian
173 advocate, the court shall enter a written order appointing the
174 guardian advocate and containing ~~determining the need for a~~

12-00397A-08

2008688__

175 guardian advocate. ~~The written order shall contain the findings~~
176 of facts and conclusions of law on which the court made its
177 decision, including. ~~The court shall make the following findings:~~

178 (a)1. The nature and scope of the person's incapacity;

179 (b)2. The exact areas in which the individual lacks
180 capacity to make informed decisions about care and treatment
181 services or to meet the essential requirements for his or her
182 physical health and safety;

183 (c)3. The specific legal disabilities to which the person
184 with developmental disabilities is subject; ~~and~~

185 (d) The name of the person selected as guardian advocate
186 and the reasons for the court's selection; and

187 (e)4. The powers, ~~and~~ duties, and responsibilities of the
188 guardian advocate, including bonding of the guardian advocate, as
189 provided in ~~governed by~~ s. 744.351.

190 (8)(g) LEGAL RIGHTS.--A person with developmental
191 disabilities for whom a guardian advocate has been appointed
192 retains all legal rights except those that ~~which~~ have been
193 specifically granted to the guardian advocate.

194 (9)(h) POWERS AND DUTIES ~~of guardian advocate~~.--A guardian
195 advocate for a person with developmental disabilities has ~~shall~~
196 ~~be a person or corporation qualified to act as guardian, with the~~
197 same powers, duties, and responsibilities required of a guardian
198 under chapter 744 or those defined by court order issued under
199 this section. ~~However, a guardian advocate may not be required to~~
200 ~~file an annual accounting under s. 744.3678 if the court~~
201 ~~determines that the person with developmental disabilities~~
202 ~~receives income only from social security benefits and the~~
203 ~~guardian advocate is the person's representative payee for the~~

12-00397A-08

2008688__

204 | ~~benefits.~~

205 | (10)~~(3)~~ COURT COSTS.--In all proceedings under this
206 | section, ~~no~~ court costs may not ~~shall~~ be charged against the
207 | agency.

208 | Section 2. Paragraph (h) of subsection (3) of section
209 | 393.13, Florida Statutes, is amended to read:

210 | 393.13 Treatment of persons with developmental
211 | disabilities.--

212 | (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL
213 | DISABILITIES.--The rights described in this subsection shall
214 | apply to all persons with developmental disabilities, whether or
215 | not such persons are clients of the agency.

216 | (h) Persons with developmental disabilities shall have a
217 | right to consent to or refuse treatment, subject to the powers of
218 | a guardian advocate appointed pursuant to s. 393.12 or a guardian
219 | appointed pursuant to ~~provisions of s. 393.12(2)(a) or~~ chapter
220 | 744.

221 | Section 3. This act shall take effect July 1, 2008.