

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Ambler offered the following:

3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Section 393.12, Florida Statutes, is amended to  
6 read:

7 393.12 Capacity; appointment of guardian advocate.--

8 (1) CAPACITY.--

9 (a) ~~The issue of capacity shall be separate and distinct~~  
10 ~~from a determination of the appropriateness of admission to~~  
11 ~~nonresidential services or residential care for a condition of~~  
12 ~~developmental disabilities. A No person with a developmental~~  
13 ~~disability may not shall~~ be presumed incapacitated solely by  
14 reason of his or her acceptance in nonresidential services or  
15 admission to residential care and may not; ~~nor shall any such~~

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16 ~~person~~ be denied the full exercise of all legal rights  
17 guaranteed to citizens of this state and of the United States.

18 (b) The determination of incapacity ~~issue of capacity~~ of a  
19 person with a developmental disability and the appointment of a  
20 guardian must be conducted ~~disabilities shall be determined~~ in a  
21 separate proceeding according to the procedures and requirements  
22 of chapter 744 and the Florida Probate Rules.

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

24 (a) ~~Conditions.~~—A circuit probate court may appoint a  
25 guardian advocate, without an adjudication of incapacity, for a  
26 person with developmental disabilities, if the person lacks the  
27 decisionmaking ability ~~capacity~~ to do some, but not all, of the  
28 decisionmaking tasks necessary to care for his or her person or  
29 ~~property, or estate~~ or if the person has voluntarily petitioned  
30 for the appointment of a guardian advocate. Except as otherwise  
31 specified, the proceeding shall be governed by the Florida Rules  
32 of Probate Civil Procedure.

33 (b) A person who is being considered for appointment or is  
34 appointed as a guardian advocate need not be represented by an  
35 attorney unless required by the court or if the guardian  
36 advocate is delegated any rights regarding property other than  
37 the right to be the representative payee for government  
38 benefits. This paragraph applies only to proceedings relating to  
39 the appointment of a guardian advocate and the court's  
40 supervision of a guardian advocate and is not an exercise of the  
41 Legislature's authority pursuant to s. (2) (a), Art. V of the  
42 State Constitution.

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43        (3) ~~(b)~~ PETITION.--A petition to appoint a guardian  
44 advocate for a person with a developmental disability may be  
45 executed by an adult person who is a resident of this state. The  
46 petition must ~~shall~~ be verified and must ~~shall~~:

47        (a) ~~1~~. State the name, age, and present address of the  
48 petitioner and his or her relationship to the person with a  
49 developmental disability ~~disabilities~~;

50        (b) ~~2~~. State the name, age, county of residence, and  
51 present address of the person with a developmental disability  
52 ~~disabilities~~;

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

56        (d) ~~4~~. Specify the exact areas in which the person lacks  
57 the decisionmaking ability ~~capacity~~ to make informed decisions  
58 about his or her care and treatment services or to meet the  
59 essential requirements for his or her physical health or safety;

60        (e) ~~5~~. Specify the legal disabilities to which the person  
61 is subject; and

62        (f) ~~6~~. State the name of the proposed guardian advocate,  
63 the relationship of that person to the person with a  
64 developmental disability; the relationship that the proposed  
65 guardian advocate had or has with a provider of health care  
66 services, residential services, or other services to the person  
67 with a developmental disability; ~~disabilities~~, and the reason  
68 why this person should be appointed. If a willing and qualified  
69 guardian advocate cannot be located, the petition shall so  
70 state.

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

72 (a)~~1~~. Notice of the filing of the petition must ~~shall~~ be  
73 given to the person with a developmental disability, individual  
74 ~~and his or her parent or parents~~. The notice ~~shall~~ be given both  
75 verbally and in writing in the language of the person and in  
76 English. Notice must ~~shall~~ also be given to the next of kin of  
77 the person with a developmental disability as defined in chapter  
78 744, any health care surrogate designated for the person with a  
79 developmental disability pursuant to an advance directive under  
80 chapter 765, any agent designated for the person with a  
81 developmental disability under a durable power of attorney, and  
82 such other persons as the court may direct. A copy of the  
83 petition to appoint a guardian advocate must ~~shall~~ be served  
84 with the notice.

85 (b)~~2~~. The notice must ~~shall~~ state that a hearing will be  
86 held ~~shall be set~~ to inquire into the capacity of the person  
87 with a developmental disability ~~disabilities~~ to exercise the  
88 rights enumerated in the petition. The notice must ~~shall~~ also  
89 state the date of the hearing on the petition.

90 (c)~~3~~. The notice shall state that the person with a  
91 developmental disability ~~individual with developmental~~  
92 ~~disabilities~~ has the right to be represented by counsel of his  
93 or her own choice and that if the person ~~individual~~ cannot  
94 afford an attorney, the court shall appoint one.

95 (5)~~(d)~~ COUNSEL.--Within 3 days after a petition has been  
96 filed, the court shall appoint an attorney to represent a person  
97 with a developmental disability who is the subject of a petition  
98 to appoint a guardian advocate. The person with a developmental

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99 disability may substitute his or her own attorney for the  
100 attorney appointed by the court.

101 (a) If the court appoints the attorney:

102 1. The court shall appoint a private attorney who shall be  
103 selected from the attorney registry compiled pursuant to s.

104 27.40.

105 2. The attorney must have completed a minimum of 8 hours  
106 of education in guardianship. The court may waive this  
107 requirement for an attorney who has served as a court-appointed  
108 attorney in guardian advocate proceedings or as an attorney of  
109 record for guardian advocates for at least 3 years.

110 (b) An attorney representing a person with a developmental  
111 disability may not also serve as the guardian advocate of the  
112 person, as counsel for the guardian advocate, or as counsel for  
113 the person petitioning for the appointment of a guardian  
114 advocate.

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

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

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

125 (a)1. Upon the filing of the petition to appoint a  
126 guardian advocate, the court shall set a date for holding a

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127 ~~hearing on upon which the petition shall be heard. The A hearing~~  
128 ~~must on the petition shall~~ be held as soon as practicable after  
129 the petition is filed, but reasonable delay for the purpose of  
130 investigation, discovery, or procuring counsel or witnesses may  
131 ~~shall~~ be granted.

132 (b)2- The hearing must be held ~~shall be conducted~~ at the  
133 time and place specified in the notice of hearing and must. ~~The~~  
134 ~~hearing shall~~ be conducted in a manner consistent with due  
135 process.

136 (c)3- The person with a developmental disability  
137 ~~individual~~ has the right to be present at the hearing and shall  
138 be present unless good cause to exclude the individual can be  
139 shown. The person individual has the right to remain silent, to  
140 present evidence, to call and cross-examine witnesses, and to  
141 have the hearing open or closed, as the person may choose.

142 (d)4- At the hearing, the court shall receive and consider  
143 all reports relevant to the person's disability disabilities,  
144 including, but not limited to, the person's current individual  
145 family or individual support plan, the individual education  
146 plan, and other professional reports documenting the condition  
147 and needs of the person individual.

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

151 (7) ADVANCE DIRECTIVES FOR HEALTH CARE AND DURABLE POWER  
152 OF ATTORNEY.--In each proceeding in which a guardian advocate is  
153 appointed under this section, the court shall determine whether  
154 the person with a developmental disability has executed any

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155 valid advance directive under chapter 765 or a durable power of  
156 attorney under chapter 709.

157 (a) If the person with a developmental disability has  
158 executed an advance directive or durable power of attorney, the  
159 court must consider and find whether the documents will  
160 sufficiently address the needs of the person with a  
161 developmental disability for whom the guardian advocate is  
162 sought. A guardian advocate may not be appointed if the court  
163 finds that the advance directive or durable power of attorney  
164 provides an alternative to the appointment of a guardian  
165 advocate which will sufficiently address the needs of the person  
166 with a developmental disability.

167 (b) If an interested person seeks to contest an advance  
168 directive or durable power of attorney executed by a person with  
169 a developmental disability, the interested person shall file a  
170 verified statement. The verified statement shall include the  
171 factual basis for the belief that the advance directive or  
172 durable power of attorney is invalid or does not sufficiently  
173 address the needs of the person for whom a guardian advocate is  
174 sought or that the person with authority under the advance  
175 directive or durable power of attorney is abusing his or her  
176 power.

177 (c) If an advance directive exists, the court shall  
178 specify in its order and letters of guardian advocacy what  
179 authority, if any, the guardian advocate shall exercise over the  
180 person's health care surrogate. Pursuant to the grounds listed  
181 in s. 765.105, the court, upon its own motion, may, with notice  
182 to the health care surrogate and any other appropriate parties,

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183 modify or revoke the authority of the health care surrogate to  
184 make health care decisions for the person with a developmental  
185 disability. For purposes of this section, the term "health care  
186 decision" has the same meaning as in s. 765.101.

187 (d) If any durable power of attorney exists, the court  
188 shall specify in its order and letters of guardian advocacy what  
189 powers of the agent, if any, are suspended and granted to the  
190 guardian advocate. The court, however, may not suspend any  
191 powers of the agent unless the court determines the durable  
192 power of attorney is invalid or there is an abuse by the agent  
193 of the powers granted.

194 (8)(f) COURT ORDER determining the appointment of a  
195 guardian advocate.--If the court finds the person with a  
196 developmental disability ~~disabilities~~ requires the appointment  
197 of a guardian advocate, the court shall enter a written order  
198 appointing the guardian advocate and containing ~~determining the~~  
199 need for a guardian advocate. The written order shall contain  
200 the findings of facts and conclusions of law on which the court  
201 made its decision, including. The court shall make the following  
202 findings:

203 (a)1. The nature and scope of the person's lack of  
204 decisionmaking ability ~~incapacity~~;

205 (b)2. The exact areas in which the individual lacks  
206 decisionmaking ability ~~capacity~~ to make informed decisions about  
207 care and treatment services or to meet the essential  
208 requirements for his or her physical health and safety;

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

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

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

216 (9)(g) LEGAL RIGHTS.--A person with a developmental  
217 disability ~~disabilities~~ for whom a guardian advocate has been  
218 appointed retains all legal rights except those that ~~which~~ have  
219 been specifically granted to the guardian advocate.

220 (10)(h) POWERS AND DUTIES OF GUARDIAN ADVOCATE.--A  
221 guardian advocate for a person with a developmental disability  
222 ~~disabilities~~ shall be a person or corporation qualified to act  
223 as guardian, with the same powers, duties, and responsibilities  
224 required of a guardian under chapter 744 or those defined by  
225 court order under this section. However, a guardian advocate may  
226 not be required to file an annual accounting under s. 744.3678  
227 if the court determines that the person with a developmental  
228 disability ~~disabilities~~ receives income only from Social  
229 Security benefits and the guardian advocate is the person's  
230 representative payee for the benefits.

231 (11)(3) COURT COSTS.--In all proceedings under this  
232 section, ~~no~~ court costs may not ~~shall~~ be charged against the  
233 agency.

234 (12) SUGGESTION OF RESTORATION OF RIGHTS.--Any interested  
235 person, including the person with a developmental disability,  
236 may file a suggestion of restoration of rights with the court in  
237 which the guardian advocacy is pending. The suggestion must  
238 state that the person with a developmental disability is

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239 currently capable of exercising some or all of the rights that  
240 were delegated to the guardian advocate and provide evidentiary  
241 support for the filing of the suggestion. Evidentiary support  
242 includes, but is not limited to, a signed statement from a  
243 medical, psychological, or psychiatric practitioner by whom the  
244 person with a developmental disability was evaluated and which  
245 supports the suggestion for the restoration. If the petitioner  
246 is unable to provide evidentiary support due to the lack of  
247 access to such information or reports, the petitioner may state  
248 a good faith basis for the suggestion for the restoration of  
249 rights without attaching evidentiary support. The court shall  
250 immediately set a hearing if no evidentiary support is attached  
251 to inquire of the petitioner and guardian advocate as to the  
252 reason and enter such orders as are appropriate to secure the  
253 required documents. The person with a disability and the  
254 person's attorney shall be provided notice of the hearing.

255 (a) Within 3 days after the filing of the suggestion,  
256 counsel shall be appointed for the person with a developmental  
257 disability as set forth in subsection (5).

258 (b) The clerk of the court shall immediately send notice  
259 of the filing of the suggestion to the person with a  
260 developmental disability, the guardian advocate, the attorney  
261 for the person with a developmental disability, the attorney for  
262 the guardian advocate, if any, and any other interested person  
263 designated by the court. Formal notice shall be served on the  
264 guardian advocate. Informal notice may be served on other  
265 persons. Notice need not be served on the person who filed the  
266 suggestion.

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267       (c) Any objections to the suggestion must be filed within  
268 20 days after service of the notice. If an objection is timely  
269 filed, or if the evidentiary support suggests that restoration  
270 of rights is not appropriate, the court shall set the matter for  
271 hearing. The hearing shall be conducted as set forth in s.  
272 744.1095. The court, at the hearing, shall consider all reports  
273 and testimony relevant to the person's decisionmaking abilities  
274 at the hearing, including, but not limited to, the person's  
275 current individual family plan or individual support plan, the  
276 individual education plan, and other professional reports that  
277 document the condition and needs of the person.

278       (d) Notice of the hearing and copies of the objections  
279 shall be served upon the person with a developmental disability,  
280 the attorney for the person with a developmental disability, the  
281 guardian advocate, the attorney for the guardian advocate, the  
282 next of kin of the person with a developmental disability, and  
283 any other interested person as directed by the court.

284       (e) If no objections are filed and the court is satisfied  
285 with the evidentiary support for restoration, the court shall  
286 enter an order of restoration of rights which were delegated to  
287 a guardian advocate and which the person with a developmental  
288 disability may now exercise.

289       (f) At the conclusion of a hearing, the court shall enter  
290 an order denying the suggestion or restoring all or some of the  
291 rights that were delegated to the guardian advocate. If only  
292 some rights are restored to the person with a developmental  
293 disability, the court shall enter amended letters of guardian  
294 advocacy.

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295       (g) If only some rights are restored to the person with a  
296 developmental disability, the order must state which rights are  
297 restored and amended letters of guardian advocacy shall be  
298 issued by the court. The guardian advocate shall amend the  
299 current plan as required under chapter 744 if personal rights  
300 are restored to the person with a developmental disability. The  
301 guardian advocate shall file a final accounting as required  
302 under chapter 744 if all property rights are restored to the  
303 person with a developmental disability. The guardian advocate  
304 must file the amended plan or final accounting within 60 days  
305 after the order restoring rights and amended letters of guardian  
306 advocacy are issued. A copy of the reports shall be served upon  
307 the person with a developmental disability and the attorney for  
308 the person with a developmental disability.

309       Section 2. Paragraph (h) of subsection (3) of section  
310 393.13, Florida Statutes, is amended to read:

311       393.13 Treatment of persons with developmental  
312 disabilities.--

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

317       (h) Persons with developmental disabilities shall have a  
318 right to consent to or refuse treatment, subject to the powers  
319 of a guardian advocate appointed pursuant to s. 393.12 or a  
320 guardian appointed pursuant to ~~provisions of s. 393.12(2)(a) or~~  
321 chapter 744.

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

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**T I T L E   A M E N D M E N T**

Remove the entire title and insert:

A bill to be entitled

An act relating to guardian advocates for persons with developmental disabilities; amending s. 393.12, F.S.; requiring the court to conduct determination of incapacity of persons with developmental disabilities and appointment of guardian advocates in separate proceedings; revising conditions relating to venue for appointment of guardian advocates; providing that the guardian advocate need not be represented by an attorney unless required by the court or the guardian advocate is delegated certain rights regarding property; limiting applicability to certain proceedings relating to appointment and supervision of guardian advocates; requiring the petition to include the relationship of the proposed guardian advocate to certain providers; modifying the persons to whom a notice of the filing of the petition must be given to include next of kin, the health care surrogate designated to execute an advance directive, and the agent under durable power of attorney; establishing a timeframe for appointment of counsel and modifying who may be appointed as counsel to a person with a developmental disability; providing conditions for the court to appoint attorneys; requiring court proceedings and orders to consider advance

HOUSE AMENDMENT

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351 directives for health care and durable powers of attorney;  
352 requiring the court's order to provide the name and  
353 reasons for the selection of the guardian advocate;  
354 providing a process for restoration of rights for the  
355 person with a developmental disability; providing for the  
356 petitioner to submit evidentiary support to the court;  
357 providing for a hearing if no evidentiary support is  
358 available; amending s. 393.13, F.S.; conforming a cross-  
359 reference; providing an effective date.

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