



939538

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
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Floor: 1/AD/3R 4/29/2008 9:56 AM	.	Floor: SEN A/AA 5/1/2008 4:11 PM

1 Senator Crist moved the following **amendment**:

2
3 **Senate Amendment (with title amendment)**

4 Delete everything after the enacting clause
5 and insert:

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

8 393.12 Capacity; appointment of guardian advocate.--

9 (1) CAPACITY.--

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



939538

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

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

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

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

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

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



939538

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 present
51 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 the
57 decisionmaking ability ~~capacity~~ to make informed decisions about
58 his or her care and treatment services or to meet the essential
59 requirements for his or her physical health or safety;

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

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

70 (4)(e) NOTICE.--

71 (a)1. Notice of the filing of the petition must ~~shall~~ be
72 given to the person with a developmental disability, individual
73 ~~and his or her parent or parents~~. The notice shall be given both
74 verbally and in writing in the language of the person and in
75 English. Notice must ~~shall~~ also be given to the next of kin of
76 the person with a developmental disability as defined in chapter



939538

77 744, a health care surrogate designated to execute an advance
78 directive under chapter 765, an agent under a durable power of
79 attorney, and such other persons as the court may direct. A copy
80 of the petition to appoint a guardian advocate ~~must~~ ~~shall~~ be
81 served with the notice.

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

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

92 (5) ~~(d)~~ COUNSEL.--Within 3 days after a petition has been
93 filed, the court shall appoint an attorney to represent a person
94 with a developmental disability who is the subject of a petition
95 to appoint a guardian advocate. The person with a developmental
96 disability may substitute his or her own attorney for the
97 attorney appointed by the court.

98 (a) If the court appoints the attorney, the attorney must
99 have completed a minimum of 8 hours of education in guardianship.
100 The court may waive this requirement for an attorney who has
101 served as a court-appointed attorney in guardian advocate
102 proceedings or as an attorney of record for guardian advocates
103 for at least 3 years.

104 (b) An attorney representing a person with a developmental
105 disability may not also serve as the guardian advocate of the
106 person, as counsel for the guardian advocate, or as counsel for



939538

107 the person petitioning for the appointment of a guardian
108 advocate.

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

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

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

118 ~~(a)1.~~ Upon the filing of the petition to appoint a guardian
119 advocate, the court shall set a date for holding a hearing on
120 ~~upon which the petition shall be heard. The A hearing must on the~~
121 ~~petition shall be held as soon as practicable after the petition~~
122 ~~is filed, but reasonable delay for the purpose of investigation,~~
123 ~~discovery, or procuring counsel or witnesses may shall be~~
124 ~~granted.~~

125 ~~(b)2.~~ The hearing must be held ~~shall be conducted~~ at the
126 time and place specified in the notice of hearing and must. ~~The~~
127 ~~hearing shall be conducted in a manner consistent with due~~
128 ~~process.~~

129 ~~(c)3.~~ The person with a developmental disability individual
130 has the right to be present at the hearing and shall be present
131 unless good cause to exclude the individual can be shown. The
132 person individual has the right to remain silent, to present
133 evidence, to call and cross-examine witnesses, and to have the
134 hearing open or closed, as the person may choose.

135 ~~(d)4.~~ At the hearing, the court shall receive and consider
136 all reports relevant to the person's disability ~~disabilities,~~



939538

137 including, but not limited to, the person's current individual
138 family or individual support plan, the individual education plan,
139 and other professional reports documenting the condition and
140 needs of the person individual.

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

144 (7) ADVANCE DIRECTIVES FOR HEALTH CARE AND DURABLE POWER OF
145 ATTORNEY.--In each proceeding in which a guardian advocate is
146 appointed under this section, the court shall determine whether
147 the person with a developmental disability has executed any valid
148 advance directive under chapter 765 or a durable power of
149 attorney under chapter 709.

150 (a) If the person with a developmental disability has
151 executed an advance directive or durable power of attorney, the
152 court must consider and find whether the documents will
153 sufficiently address the needs of the person with a developmental
154 disability for whom the guardian advocate is sought. A guardian
155 advocate may not be appointed if the court finds that the advance
156 directive or durable power of attorney provides an alternative to
157 the appointment of a guardian advocate which will sufficiently
158 address the needs of the person with a developmental disability.

159 (b) If an interested person seeks to contest an advance
160 directive or durable power of attorney executed by a person with
161 a developmental disability, the interested person shall file a
162 verified statement. The verified statement shall include the
163 factual basis for the belief that the advance directive or
164 durable power of attorney is invalid or does not sufficiently
165 address the needs of the person for whom a guardian advocate is
166 sought or that the person with authority under the advance



939538

167 directive or durable power of attorney is abusing his or her
168 power.

169 (c) If an advance directive exists, the court shall specify
170 in its order and letters of guardian advocacy what authority, if
171 any, the guardian advocate shall exercise over the person's
172 health care surrogate. Pursuant to the grounds listed in s.
173 765.105, the court, upon its own motion, may, with notice to the
174 health care surrogate and any other appropriate parties, modify
175 or revoke the authority of the health care surrogate to make
176 health care decisions for the person with a developmental
177 disability. For purposes of this section, the term "health care
178 decision" has the same meaning as in s. 765.101.

179 (d) If any durable power of attorney exists, the court
180 shall specify in its order and letters of guardian advocacy what
181 powers of the agent, if any, are suspended and granted to the
182 guardian advocate. The court, however, may not suspend any powers
183 of the agent unless the court determines the durable power of
184 attorney is invalid or there is an abuse by the agent of the
185 powers granted.

186 (8)-(f) COURT ORDER determining the appointment of a
187 guardian advocate.--If the court finds the person with a
188 developmental disability disabilities requires the appointment of
189 a guardian advocate, the court shall enter a written order
190 appointing the guardian advocate and containing determining the
191 need for a guardian advocate. The written order shall contain the
192 findings of facts and conclusions of law on which the court made
193 its decision, including. The court shall make the following
194 findings:

195 (a)1. The nature and scope of the person's lack of
196 decisionmaking ability incapacity;



939538

197 (b)2- The exact areas in which the individual lacks
198 decisionmaking ability capacity to make informed decisions about
199 care and treatment services or to meet the essential requirements
200 for his or her physical health and safety;

201 (c)3- The specific legal disabilities to which the person
202 with developmental disability disabilities is subject; and

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

205 (e)4- The powers, and duties, and responsibilities of the
206 guardian advocate, including bonding of the guardian advocate, as
207 provided in governed by s. 744.351.

208 (9)(g) LEGAL RIGHTS.--A person with a developmental
209 disability disabilities for whom a guardian advocate has been
210 appointed retains all legal rights except those that which have
211 been specifically granted to the guardian advocate.

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

223 (11)(3) COURT COSTS.--In all proceedings under this
224 section, ~~no~~ court costs may not shall be charged against the
225 agency.



939538

226 (12) SUGGESTION OF RESTORATION OF RIGHTS.--Any interested
227 person, including the person with a developmental disability, may
228 file a suggestion of restoration of rights with the court in
229 which the guardian advocacy is pending. The suggestion must state
230 that the person with a developmental disability is currently
231 capable of exercising some or all of the rights that were
232 delegated to the guardian advocate and provide evidentiary
233 support for the filing of the suggestion. Evidentiary support
234 includes, but is not limited to, a signed statement from a
235 medical, psychological, or psychiatric practitioner by whom the
236 person with a developmental disability was evaluated and which
237 supports the suggestion for the restoration. If the petitioner is
238 unable to provide evidentiary support due to the lack of access
239 to such information or reports, the petitioner may state a good
240 faith basis for the suggestion for the restoration of rights
241 without attaching evidentiary support. The court shall
242 immediately set a hearing if no evidentiary support is attached
243 to inquire of the petitioner and guardian advocate as to the
244 reason and enter such orders as are appropriate to secure the
245 required documents. The person with a disability and the person's
246 attorney shall be provided notice of the hearing.

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

250 (b) The clerk of the court shall immediately send notice of
251 the filing of the suggestion to the person with a developmental
252 disability, the guardian advocate, the attorney for the person
253 with a developmental disability, the attorney for the guardian
254 advocate, if any, and any other interested person designated by
255 the court. Formal notice shall be served on the guardian



939538

256 advocate. Informal notice may be served on other persons. Notice
257 need not be served on the person who filed the suggestion.

258 (c) Any objections to the suggestion must be filed within
259 20 days after service of the notice. If an objection is timely
260 filed, or if the evidentiary support suggests that restoration of
261 rights is not appropriate, the court shall set the matter for
262 hearing. The hearing shall be conducted as set forth in s.
263 744.1095. The court, at the hearing, shall consider all reports
264 and testimony relevant to the person's decisionmaking abilities
265 at the hearing, including, but not limited to, the person's
266 current individual family plan or individual support plan, the
267 individual education plan, and other professional reports that
268 document the condition and needs of the person.

269 (d) Notice of the hearing and copies of the objections
270 shall be served upon the person with a developmental disability,
271 the attorney for the person with a developmental disability, the
272 guardian advocate, the attorney for the guardian advocate, the
273 next of kin of the person with a developmental disability, and
274 any other interested person as directed by the court.

275 (e) If no objections are filed and the court is satisfied
276 with the evidentiary support for restoration, the court shall
277 enter an order of restoration of rights which were delegated to a
278 guardian advocate and which the person with a developmental
279 disability may now exercise.

280 (f) At the conclusion of a hearing, the court shall enter
281 an order denying the suggestion or restoring all or some of the
282 rights that were delegated to the guardian advocate. If only some
283 rights are restored to the person with a developmental
284 disability, the court shall enter amended letters of guardian
285 advocacy.



939538

286 (g) If only some rights are restored to the person with a
287 developmental disability, the order must state which rights are
288 restored and amended letters of guardian advocacy shall be issued
289 by the court. The guardian advocate shall amend the current plan
290 as required under chapter 744 if personal rights are restored to
291 the person with a developmental disability. The guardian advocate
292 shall file a final accounting as required under chapter 744 if
293 all property rights are restored to the person with a
294 developmental disability. The guardian advocate must file the
295 amended plan or final accounting within 60 days after the order
296 restoring rights and amended letters of guardian advocacy are
297 issued. A copy of the reports shall be served upon the person
298 with a developmental disability and the attorney for the person
299 with a developmental disability.

300 Section 2. Paragraph (h) of subsection (3) of section
301 393.13, Florida Statutes, is amended to read:

302 393.13 Treatment of persons with developmental
303 disabilities.--

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

308 (h) Persons with developmental disabilities shall have a
309 right to consent to or refuse treatment, subject to the powers of
310 a guardian advocate appointed pursuant to s. 393.12 or a guardian
311 appointed pursuant to provisions of s. 393.12(2)(a) or chapter
312 744.

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

314
315 ===== T I T L E A M E N D M E N T =====



939538

316 And the title is amended as follows:

317 Delete everything before the enacting clause
318 and insert:

319 A bill to be entitled
320 An act relating to guardian advocates for persons with
321 developmental disabilities; amending s. 393.12, F.S.;
322 requiring the court to conduct determination of incapacity
323 of persons with developmental disabilities and appointment
324 of guardian advocates in separate proceedings; revising
325 conditions relating to venue for appointment of guardian
326 advocates; providing that the guardian advocate need not
327 be represented by an attorney unless required by the court
328 or the guardian advocate is delegated certain rights
329 regarding property; limiting applicability to certain
330 proceedings relating to appointment and supervision of
331 guardian advocates; requiring the petition to include the
332 relationship of the proposed guardian advocate to certain
333 providers; modifying the persons to whom a notice of the
334 filing of the petition must be given to include next of
335 kin, the health care surrogate designated to execute an
336 advance directive, and the agent under durable power of
337 attorney; establishing a timeframe for appointment of
338 counsel and modifying who may be appointed as counsel to a
339 person with a developmental disability; providing
340 conditions for the court to appoint attorneys; requiring
341 court proceedings and orders to consider advance
342 directives for health care and durable powers of attorney;
343 requiring the court's order to provide the name and
344 reasons for the selection of the guardian advocate;
345 providing a process for restoration of rights for the



939538

346 | person with a developmental disability; providing for the
347 | petitioner to submit evidentiary support to the court;
348 | providing for a hearing if no evidentiary support is
349 | available; amending s. 393.13, F.S.; conforming a cross-
350 | reference; providing an effective date.