

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

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

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

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

68 | (c) A person being considered for or selected to be a
 69 | guardian advocate need not be represented by an attorney unless
 70 | required by the court.

71 | (3)(b) PETITION.--A petition to appoint a guardian
 72 | advocate for a person with developmental disabilities may be
 73 | executed by an adult person who is a resident of this state.
 74 | The petition 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
 79 | present 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
 84 | the capacity to make informed decisions about his or her care

85 and treatment services or to meet the essential requirements for
 86 his or her physical health or safety;

87 (e)5. Specify the legal disabilities to which the person
 88 is 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~~
 93 ~~why this person should be appointed. If a willing and qualified~~
 94 ~~guardian advocate cannot be located, the petition shall so~~
 95 ~~state.~~

96 (4)(e) NOTICE.--

97 (a)1. Notice of the filing of the petition must ~~shall~~ be
 98 given to the person with developmental disabilities, individual
 99 ~~and his or her parent or parents. The notice shall be given both~~
 100 verbally and in writing, in the language of the person and in
 101 English. Notice must ~~shall~~ also be given to the persons listed
 102 in subparagraphs (2)(b)1.-6. and to such other persons as the
 103 court may direct. A copy of the petition to appoint a guardian
 104 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
 107 with developmental disabilities to exercise the rights
 108 enumerated in the petition. The notice must ~~shall~~ also state the
 109 date of the 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
 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
 123 in 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
 126 of education in guardianship. The court may waive this
 127 requirement for an attorney who has served as a court-appointed
 128 attorney in guardian advocate proceedings or as an attorney of
 129 record for 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~~

141 ~~one to represent the person. The court shall appoint counsel if~~
 142 ~~no appearance has been filed within 10 working days of the~~
 143 ~~hearing.~~

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

145 (a)~~1.~~ Upon the filing of the petition to appoint a
 146 guardian advocate, the court shall set a date for holding a
 147 hearing on ~~upon which~~ the petition ~~shall be heard~~. The A hearing
 148 must ~~on the petition shall~~ be held as soon as practicable after
 149 the petition is filed, but a reasonable delay for the purpose of
 150 investigation, discovery, or procuring counsel or witnesses may
 151 ~~shall~~ be granted.

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

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

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

168 (e)~~5.~~ The Florida Evidence Code, chapter 90, applies ~~shall~~

169 ~~apply~~ at the hearing. The burden of proof must ~~shall~~ be by clear
 170 and convincing evidence.

171 (7)(f) COURT ORDER ~~determining the appointment of a~~
 172 ~~guardian advocate.--If the court finds the person with~~
 173 ~~developmental disabilities requires the appointment of a~~
 174 ~~guardian advocate, the court shall enter a written order~~
 175 appointing the guardian advocate and containing ~~determining the~~
 176 ~~need for a guardian advocate. The written order shall contain~~
 177 the findings of facts and conclusions of law on which the court
 178 made its decision, including. ~~The court shall make the following~~
 179 ~~findings:~~

180 (a)1- The nature and scope of the person's incapacity;

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

185 (c)3- The specific legal disabilities to which the person
 186 with developmental disabilities is subject; ~~and~~

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

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

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

196 (9)(h) POWERS AND DUTIES of guardian advocate.--A guardian

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

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

210 Section 2. Paragraph (h) of subsection (3) of section
 211 393.13, Florida Statutes, is amended to read:

212 393.13 Treatment of persons with developmental
 213 disabilities.--

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

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

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