

1 A bill to be entitled

2 An act relating to guardians for dependent children
3 who are developmentally disabled or incapacitated;
4 amending s. 39.701, F.S.; requiring an updated case
5 plan developed in a face-to-face conference with the
6 child and other specified persons, when appropriate;
7 providing requirements for the Department of Children
8 and Families when a court determines that a child may
9 be developmentally disabled, has a diagnosis of a
10 developmental disability, or may be incapacitated;
11 requiring the department to provide specified
12 information if another interested party or participant
13 initiates proceedings for the appointment of a
14 guardian; requiring proceedings seeking appointment of
15 a guardian advocate or a determination of incapacity
16 and the appointment of a guardian be conducted in a
17 separate proceeding in probate court; amending s.
18 393.12, F.S.; requiring the probate court to initiate
19 proceedings for appointment of guardian advocates if
20 petitions are filed for appointment of guardian
21 advocates for certain minors who are subject to
22 chapter 39, F.S., proceedings if such minors have
23 attained a specified age; providing that such a child
24 has the same due process rights as an adult; providing
25 requirements for when an order appointing a guardian
26 advocate must be issued; amending s. 744.301, F.S.;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

27 providing that if a child is subject to proceedings
 28 under chapter 39, F.S., the parents may act as natural
 29 guardians unless the dependency or probate court finds
 30 that it is not in the child's best interests or their
 31 parental rights have been terminated; amending s.
 32 744.3021, F.S.; requiring the probate court to
 33 initiate proceedings for appointment of guardian
 34 advocates if petitions are filed for appointment
 35 guardian advocates for certain minors who are subject
 36 to chapter 39, F.S., proceedings if the minors have
 37 attained a specified age; providing that such a child
 38 has the same due process rights as an adult; providing
 39 requirements for when an order appointing a guardian
 40 advocate must be issued; providing an effective date.

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42 Be It Enacted by the Legislature of the State of Florida:

43

44 Section 1. Paragraphs (b) and (c) of subsection (3) of
 45 section 39.701, Florida Statutes, are amended to read:

46 39.701 Judicial review.—

47 (3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

48 (b) At the first judicial review hearing held subsequent
 49 to the child's 17th birthday, the department shall provide the
 50 court with an updated case plan that includes specific
 51 information related to the independent living skills that the
 52 child has acquired since the child's 13th birthday, or since the

53 date the child came into foster care, whichever came later.

54 1. For any child who may be developmentally disabled or
55 incapacitated, the updated case plan must be developed in a
56 face-to-face conference with the child, if appropriate; the
57 child's attorney; any court-appointed guardian ad litem; the
58 temporary custodian of the child; and the parent, if the
59 parent's rights have not been terminated.

60 2. At the judicial review hearing, if the court determines
61 pursuant to the procedures and requirements of chapter 744 and
62 the Florida Probate Rules that the child may be developmentally
63 disabled or has a diagnosis of a developmental disability as
64 defined in s. 393.063, or may be incapacitated, the department
65 shall:

66 a. Complete a multidisciplinary report, which must
67 include, but is not limited to, a psychosocial evaluation and
68 educational report, as part of the child's updated case plan if
69 such a report has not been completed within the previous 2
70 years.

71 b. Identify one or more individuals who are willing to
72 serve as the guardian advocate pursuant to s. 393.12 or as the
73 plenary or limited guardian pursuant to chapter 744 and the
74 Florida Probate Rules. Any other parties or participants may
75 make efforts to identify such a plenary or limited guardian. A
76 child's biological or adoptive family members, including a
77 child's parents if the parents' rights have not been terminated,
78 may not be considered for service as the plenary or limited

79 guardian unless the court enters a written order finding that
80 such an appointment is in the child's best interests.

81 c. Initiate proceedings within 180 days after the child's
82 17th birthday for the appointment of a guardian advocate,
83 plenary guardian, or limited guardian for the child in the court
84 with proper jurisdiction over probate matters according to the
85 local rules of judicial administration and the procedures and
86 requirements of chapter 744 and the Florida Probate Rules.

87 3. In the event another interested party or participant
88 initiates proceedings for the appointment of a guardian
89 advocate, plenary guardian, or limited guardian for the child,
90 the department shall provide all necessary documentation and
91 information to the petitioner to complete a petition under
92 chapter 393 or chapter 744 within 45 days after the first
93 judicial review hearing after the child's 17th birthday.

94 4. Any proceedings seeking appointment of a guardian
95 advocate or a determination of incapacity and the appointment of
96 a guardian must be conducted in a separate proceeding in the
97 court with proper jurisdiction over probate matters according to
98 local rules of judicial administration and the procedures and
99 requirements of chapter 744 and the Florida Probate Rules.

100 (c) If the court finds at the judicial review hearing that
101 the department has not met its obligations to the child as
102 stated in this part, in the written case plan, or in the
103 provision of independent living services, the court may issue an
104 order directing the department to show cause as to why it has

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105 not done so. If the department cannot justify its noncompliance,
106 the court may give the department 30 days within which to
107 comply. If the department fails to comply within 30 days, the
108 court may hold the department in contempt.

109 Section 2. Paragraph (c) is added to subsection (2) of
110 section 393.12, Florida Statutes, to read:

111 393.12 Capacity; appointment of guardian advocate.—

112 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

113 (c) If a petition is filed pursuant to this section
114 requesting appointment of a guardian advocate for a minor who is
115 alleged to be developmentally disabled and is the subject of any
116 proceeding under chapter 39, the court with proper jurisdiction
117 over probate matters according to local rules of judicial
118 administration and the Florida Probate Rules shall initiate
119 proceedings pursuant to this section when the minor reaches the
120 age of 17 years and 6 months or anytime thereafter. The minor
121 shall be provided all the due process rights conferred upon an
122 alleged developmentally disabled adult pursuant to this chapter.
123 The order of appointment of guardian advocate under this section
124 shall issue upon the minor's 18th birthday or as soon thereafter
125 as possible.

126 Section 3. Subsection (1) of section 744.301, Florida
127 Statutes, is amended to read:

128 744.301 Natural guardians.—

129 (1) The parents jointly are the natural guardians of their
130 own children and of their adopted children, during minority,

131 unless the parent's parental rights have been terminated
132 pursuant to chapter 39. If a child is the subject of any
133 proceeding under chapter 39, the parents may act as natural
134 guardians under this section unless the dependency or probate
135 court finds that it is not in the child's best interests. If one
136 parent dies, the surviving parent remains the sole natural
137 guardian even if he or she remarries. If the marriage between
138 the parents is dissolved, the natural guardianship belongs to
139 the parent to whom sole parental responsibility has been
140 granted, or if the parents have been granted shared parental
141 responsibility, both continue as natural guardians. If the
142 marriage is dissolved and neither parent is given parental
143 responsibility for the child, neither may act as natural
144 guardian of the child. The mother of a child born out of wedlock
145 is the natural guardian of the child and is entitled to primary
146 residential care and custody of the child unless the court
147 enters an order stating otherwise.

148 Section 4. Subsection (1) of section 744.3021, Florida
149 Statutes, is amended, and subsection (4) is added to that
150 section, to read:

151 744.3021 Guardians of minors.—

152 (1) Except as provided in subsection (4), upon petition of
153 a parent, brother, sister, next of kin, or other person
154 interested in the welfare of a minor, a guardian for a minor may
155 be appointed by the court without the necessity of adjudication
156 pursuant to s. 744.331. A guardian appointed for a minor,

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157 whether of the person or property, has the authority of a
158 plenary guardian.

159 (4) If a petition is filed pursuant to this section
160 requesting appointment of a guardian for a minor that is the
161 subject of any proceeding under chapter 39 and who is aged 17
162 years and 6 months or older, the court with proper jurisdiction
163 over probate matters according to local rules of judicial
164 administration and the procedures and requirements of this
165 chapter and the Florida Probate Rules shall initiate proceedings
166 under s. 744.331. The alleged incapacitated minor under this
167 subsection shall be provided all the due process rights
168 conferred upon an alleged incapacitated adult pursuant to this
169 chapter and the Florida Probate Rules. The order of adjudication
170 under s. 744.331 and the letters of limited or plenary
171 guardianship may issue upon the minor's 18th birthday or as soon
172 thereafter as possible.

173 Section 5. This act shall take effect July 1, 2015.