

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. 39.6251, F.S.; requiring the continued
5 review of the necessity of guardianships for young
6 adults; amending s. 39.701, F.S.; requiring an updated
7 case plan developed in a face-to-face conference with
8 the child, if appropriate, and other specified
9 persons; providing requirements for the Department of
10 Children and Families when a court determines that
11 there is a good faith basis to appoint a guardian
12 advocate, limited guardian, or plenary guardian for
13 the child and that no less restrictive decisionmaking
14 assistance will meet the child's needs; requiring the
15 department to provide specified information if another
16 interested party or participant initiates proceedings
17 for the appointment of a guardian advocate, plenary
18 guardian, or limited guardian for the child; requiring
19 that proceedings seeking appointment of a guardian
20 advocate or a determination of incapacity and the
21 appointment of a guardian be conducted in a separate
22 proceeding in probate court; amending s. 393.12, F.S.;
23 providing that the probate court has jurisdiction over
24 proceedings for appointment of a guardian advocate if
25 petitions are filed for certain minors who are subject
26 to chapter 39, F.S., proceedings if such minors have

27 | attained a specified age; providing that such minor
 28 | has the same due process rights as certain adults;
 29 | providing requirements for when an order appointing a
 30 | guardian advocate must be issued; amending s. 744.301,
 31 | F.S.; providing that if a child is subject to
 32 | proceedings under chapter 39, F.S., the parents may
 33 | act as natural guardians unless the dependency or
 34 | probate court finds that it is not in the child's best
 35 | interests or their parental rights have been
 36 | terminated; amending s. 744.3021, F.S.; requiring the
 37 | probate court to initiate proceedings for appointment
 38 | of guardians for certain minors who are subject to
 39 | chapter 39, F.S., proceedings if petitions are filed
 40 | and if such minors have reached a specified age;
 41 | providing that such minor has the same due process
 42 | rights as certain adults; providing requirements for
 43 | when an order of adjudication and letters of limited
 44 | or plenary guardianship must be issued; providing an
 45 | effective date.

47 | Be It Enacted by the Legislature of the State of Florida:

49 | Section 1. Subsection (8) of section 39.6251, Florida
 50 | Statutes, is amended to read:

51 | 39.6251 Continuing care for young adults.—

52 | (8) During the time that a young adult is in care, the

53 | court shall maintain jurisdiction to ensure that the department
54 | and the lead agencies are providing services and coordinate
55 | with, and maintain oversight of, other agencies involved in
56 | implementing the young adult's case plan, individual education
57 | plan, and transition plan. The court shall review the status of
58 | the young adult at least every 6 months and hold a permanency
59 | review hearing at least annually. If the young adult is
60 | appointed a guardian under chapter 744 or a guardian advocate
61 | under s. 393.12, at the permanency review hearing the court
62 | shall review the necessity of continuing the guardianship and
63 | whether restoration of guardianship proceedings are needed when
64 | the young adult reaches 22 years of age. The court may appoint a
65 | guardian ad litem or continue the appointment of a guardian ad
66 | litem with the young adult's consent. The young adult or any
67 | other party to the dependency case may request an additional
68 | hearing or review.

69 | Section 2. Paragraphs (b) and (c) of subsection (3) of
70 | section 39.701, Florida Statutes, are amended to read:

71 | 39.701 Judicial review.—

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

73 | (b) At the first judicial review hearing held subsequent
74 | to the child's 17th birthday, the department shall provide the
75 | court with an updated case plan that includes specific
76 | information related to the independent living skills that the
77 | child has acquired since the child's 13th birthday, or since the
78 | date the child came into foster care, whichever came later.

79 1. For any child that may meet the requirements for
80 appointment of a guardian pursuant to chapter 744, or a guardian
81 advocate pursuant to s. 393.12, the updated case plan must be
82 developed in a face-to-face conference with the child, if
83 appropriate; the child's attorney; any court-appointed guardian
84 ad litem; the temporary custodian of the child; and the parent,
85 if the parent's rights have not been terminated.

86 2. At the judicial review hearing, if the court determines
87 pursuant to the procedures and requirements of chapter 744 and
88 the Florida Probate Rules that there is a good faith basis to
89 believe that the child qualifies for appointment of a guardian
90 advocate, limited guardian, or plenary guardian for the child
91 and that no less restrictive decisionmaking assistance will meet
92 the child's needs:

93 a. The department shall complete a multidisciplinary
94 report which must include, but is not limited to, a psychosocial
95 evaluation and educational report if such a report has not been
96 completed within the previous 2 years.

97 b. The department shall identify one or more individuals
98 who are willing to serve as the guardian advocate pursuant to s.
99 393.12 or as the plenary or limited guardian pursuant to chapter
100 744 and the Florida Probate Rules. Any other interested parties
101 or participants may make efforts to identify such a guardian
102 advocate, limited guardian, or plenary guardian. The child's
103 biological or adoptive family members, including the child's
104 parents if the parents' rights have not been terminated, may not

105 be considered for service as the plenary or limited guardian
106 unless the court enters a written order finding that such an
107 appointment is in the child's best interests.

108 c. Proceedings shall be initiated within 180 days after
109 the child's 17th birthday for the appointment of a guardian
110 advocate, plenary guardian, or limited guardian for the child in
111 the court with proper jurisdiction over probate matters
112 according to the local rules of judicial administration and the
113 procedures and requirements of chapter 744 and the Florida
114 Probate Rules.

115 3. In the event another interested party or participant
116 initiates proceedings for the appointment of a guardian
117 advocate, plenary guardian, or limited guardian for the child,
118 the department shall provide all necessary documentation and
119 information to the petitioner to complete a petition under
120 chapter 393 or chapter 744 within 45 days after the first
121 judicial review hearing after the child's 17th birthday.

122 4. Any proceedings seeking appointment of a guardian
123 advocate or a determination of incapacity and the appointment of
124 a guardian must be conducted in a separate proceeding in the
125 court with proper jurisdiction over probate matters according to
126 local rules of judicial administration and the procedures and
127 requirements of chapter 744 and the Florida Probate Rules.

128 (c) If the court finds at the judicial review hearing that
129 the department has not met its obligations to the child as
130 stated in this part, in the written case plan, or in the

131 provision of independent living services, the court may issue an
132 order directing the department to show cause as to why it has
133 not done so. If the department cannot justify its noncompliance,
134 the court may give the department 30 days within which to
135 comply. If the department fails to comply within 30 days, the
136 court may hold the department in contempt.

137 Section 3. Paragraph (c) is added to subsection (2) of
138 section 393.12, Florida Statutes, to read:

139 393.12 Capacity; appointment of guardian advocate.—

140 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

141 (c) If a petition is filed pursuant to this section
142 requesting appointment of a guardian advocate for a minor who is
143 the subject of any proceeding under chapter 39, the court with
144 proper jurisdiction over probate matters according to local
145 rules of judicial administration and the Florida Probate Rules
146 has jurisdiction over the proceedings pursuant to this section
147 when the minor reaches the age of 17 years and 6 months or
148 anytime thereafter. The minor shall be provided all the due
149 process rights conferred upon an alleged developmentally
150 disabled adult pursuant to this chapter. The order of
151 appointment of a guardian advocate under this section shall
152 issue upon the minor's 18th birthday or as soon thereafter as
153 possible.

154 Section 4. Subsection (1) of section 744.301, Florida
155 Statutes, is amended to read:

156 744.301 Natural guardians.—

157 (1) The parents jointly are the natural guardians of their
158 own children and of their adopted children, during minority,
159 unless the parents' parental rights have been terminated
160 pursuant to chapter 39. If a child is the subject of any
161 proceeding under chapter 39, the parents may act as natural
162 guardians under this section unless the dependency or probate
163 court finds that it is not in the child's best interests. If one
164 parent dies, the surviving parent remains the sole natural
165 guardian even if he or she remarries. If the marriage between
166 the parents is dissolved, the natural guardianship belongs to
167 the parent to whom sole parental responsibility has been
168 granted, or if the parents have been granted shared parental
169 responsibility, both continue as natural guardians. If the
170 marriage is dissolved and neither parent is given parental
171 responsibility for the child, neither may act as natural
172 guardian of the child. The mother of a child born out of wedlock
173 is the natural guardian of the child and is entitled to primary
174 residential care and custody of the child unless the court
175 enters an order stating otherwise.

176 Section 5. Subsection (1) of section 744.3021, Florida
177 Statutes, is amended, and subsection (4) is added to that
178 section, to read:

179 744.3021 Guardians of minors.—

180 (1) Except as provided in subsection (4), upon petition of
181 a parent, brother, sister, next of kin, or other person
182 interested in the welfare of a minor, a guardian for a minor may

183 be appointed by the court without the necessity of adjudication
184 pursuant to s. 744.331. A guardian appointed for a minor,
185 whether of the person or property, has the authority of a
186 plenary guardian.

187 (4) If a petition is filed pursuant to this section
188 requesting appointment of a guardian for a minor who is the
189 subject of any proceeding under chapter 39 and who is aged 17
190 years and 6 months or older, the court with proper jurisdiction
191 over probate matters according to local rules of judicial
192 administration and the procedures and requirements of this
193 chapter and the Florida Probate Rules has jurisdiction over the
194 proceedings under s. 744.331. The alleged incapacitated minor
195 under this subsection shall be provided all the due process
196 rights conferred upon an alleged incapacitated adult pursuant to
197 this chapter and the Florida Probate Rules. The order of
198 adjudication under s. 744.331 and the letters of limited or
199 plenary guardianship may issue upon the minor's 18th birthday or
200 as soon thereafter as possible.

201 Section 6. This act shall take effect July 1, 2015.