



461482

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/12/2015	.	
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The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 80 - 192
and insert:
pursuant to the requirements of chapter 744 that there is a good
faith basis to believe that the child qualifies for appointment
of a guardian advocate, limited guardian, or plenary guardian
and that no less restrictive decisionmaking assistance will meet
the child's needs:

a. The department shall complete a multidisciplinary report
which must include, but is not limited to, a psychosocial



461482

12 evaluation and educational report if such a report has not been
13 completed within the previous 2 years.

14 b. The department shall identify one or more individuals
15 who are willing to serve as the guardian advocate pursuant to s.
16 393.12 or as the plenary or limited guardian pursuant to chapter
17 744. Any other interested parties or participants may make
18 efforts to identify such a guardian advocate, limited guardian,
19 or plenary guardian. A child's biological or adoptive family
20 member, including the child's parent if the parent's rights have
21 not been terminated, may not be considered for service as the
22 plenary or limited guardian unless the court enters a written
23 order finding that such an appointment is in the child's best
24 interests.

25 c. Proceedings may be initiated within 6 months after the
26 child's 17th birthday for the appointment of a guardian
27 advocate, plenary guardian, or limited guardian for the child in
28 a separate proceeding in the division of the court with proper
29 jurisdiction over guardianship matters and pursuant to chapter
30 744. The Legislature encourages the use of pro bono
31 representation to initiate proceedings under this section.

32 3. In the event another interested party or participant
33 initiates proceedings for the appointment of a guardian
34 advocate, plenary guardian, or limited guardian for the child,
35 the department shall provide all necessary documentation and
36 information to the petitioner to complete a petition under
37 chapter 393 or chapter 744 within 45 days after the first
38 judicial review hearing after the child's 17th birthday.

39 4. Any proceedings seeking appointment of a guardian
40 advocate or a determination of incapacity and the appointment of



461482

41 a guardian must be conducted in a separate proceeding in the
42 division of the court with jurisdiction over guardianship
43 matters and pursuant to chapter 744.

44 (c) If the court finds at the judicial review hearing that
45 the department has not met its obligations to the child as
46 stated in this part, in the written case plan, or in the
47 provision of independent living services, the court may issue an
48 order directing the department to show cause as to why it has
49 not done so. If the department cannot justify its noncompliance,
50 the court may give the department 30 days within which to
51 comply. If the department fails to comply within 30 days, the
52 court may hold the department in contempt.

53 Section 1. Paragraph (c) is added to subsection (2) of
54 section 393.12, Florida Statutes, to read:

55 393.12 Capacity; appointment of guardian advocate.—

56 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

57 (c) If a petition is filed pursuant to this section
58 requesting appointment of a guardian advocate for a minor who is
59 the subject of any proceeding under chapter 39, the division of
60 the court with jurisdiction over guardianship matters has
61 jurisdiction over the proceedings pursuant to this section when
62 the minor reaches the age of 17 years and 6 months or anytime
63 thereafter. The minor shall be provided all the due process
64 rights conferred upon an alleged developmentally disabled adult
65 pursuant to this chapter. The order of appointment of a guardian
66 advocate under this section shall issue upon the minor's 18th
67 birthday or as soon thereafter as possible. Any proceeding
68 pursuant to this paragraph shall be conducted separately from
69 any other proceeding.



461482

70 Section 2. Subsection (1) of section 744.301, Florida
71 Statutes, is amended to read:

72 744.301 Natural guardians.—

73 (1) The parents jointly are the natural guardians of their
74 own children and of their adopted children, during minority,
75 unless the parents' parental rights have been terminated
76 pursuant to chapter 39. If a child is the subject of any
77 proceeding under chapter 39, the parents may act as natural
78 guardians under this section unless the dependency or probate
79 court finds that it is not in the child's best interests. If one
80 parent dies, the surviving parent remains the sole natural
81 guardian even if he or she remarries. If the marriage between
82 the parents is dissolved, the natural guardianship belongs to
83 the parent to whom sole parental responsibility has been
84 granted, or if the parents have been granted shared parental
85 responsibility, both continue as natural guardians. If the
86 marriage is dissolved and neither parent is given parental
87 responsibility for the child, neither may act as natural
88 guardian of the child. The mother of a child born out of wedlock
89 is the natural guardian of the child and is entitled to primary
90 residential care and custody of the child unless the court
91 enters an order stating otherwise.

92 Section 3. Subsection (1) of section 744.3021, Florida
93 Statutes, is amended, and subsection (4) is added to that
94 section, to read:

95 744.3021 Guardians of minors.—

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



461482

99 be appointed by the court without the necessity of adjudication
100 pursuant to s. 744.331. A guardian appointed for a minor,
101 whether of the person or property, has the authority of a
102 plenary guardian.

103 (4) If a petition is filed pursuant to this section
104 requesting appointment of a guardian for a minor who is the
105 subject of any proceeding under chapter 39 and who is aged 17
106 years and 6 months or older, the division of the court with
107 jurisdiction over guardianship matters has jurisdiction over the
108 proceedings under s. 744.331. The alleged incapacitated minor
109 under this subsection shall be provided all the due process
110 rights conferred upon an alleged incapacitated adult pursuant to
111 this chapter and applicable court rules. The order of
112 adjudication under s. 744.331 and the letters of limited or
113 plenary guardianship may issue upon the minor's 18th birthday or
114 as soon thereafter as possible. Any proceeding pursuant to this
115 subsection shall be conducted separately from any other
116 proceeding.

117 ===== T I T L E A M E N D M E N T =====

118 And the title is amended as follows:

119 Delete lines 20 - 38

120 and insert:

121 proceeding in guardianship court; amending s. 393.12,
122 F.S.; providing that the guardianship court has
123 jurisdiction over proceedings for appointment of a
124 guardian advocate if petitions are filed for certain
125 minors who are subject to ch. 39, F.S., proceedings if
126 such minors have attained a specified age; providing
127 that such minor has the same due process rights as



461482

128 certain adults; providing requirements for when an
129 order appointing a guardian advocate must be issued;
130 providing that proceedings seeking appointment of a
131 guardian advocate for certain minors be conducted in
132 separate proceedings; amending s. 744.301, F.S.;
133 providing that if a child is subject to proceedings
134 under ch. 39, F.S., the parents may act as natural
135 guardians unless the dependency or probate court finds
136 that it is not in the child's best interests or their
137 parental rights have been terminated; amending s.
138 744.3021, F.S.; requiring the guardianship court to
139 initiate proceedings for appointment of guardians for
140 certain minors who are subject to ch. 39, F.S.,
141 proceedings if petitions are filed and if such minors
142 have reached a specified age; providing that such
143 minor has the same due process rights as certain
144 adults; providing requirements for when an order of
145 adjudication and letters of limited or plenary
146 guardianship must be issued; providing that
147 proceedings seeking appointment of a guardian advocate
148 for certain minors be conducted in separate
149 proceedings; providing an