

By Senator Detert

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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.;
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

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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:

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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 to
49 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

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

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

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

86 3. In the event another interested party or participant
87 initiates proceedings for the appointment of a guardian

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88 advocate, plenary guardian, or limited guardian for the child,
89 the department shall provide all necessary documentation and
90 information to the petitioner to complete a petition under
91 chapter 393 or chapter 744 within 45 days after the first
92 judicial review hearing after the child's 17th birthday.

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

99 (c) If the court finds at the judicial review hearing that
100 the department has not met its obligations to the child as
101 stated in this part, in the written case plan, or in the
102 provision of independent living services, the court may issue an
103 order directing the department to show cause as to why it has
104 not done so. If the department cannot justify its noncompliance,
105 the court may give the department 30 days within which to
106 comply. If the department fails to comply within 30 days, the
107 court may hold the department in contempt.

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

110 393.12 Capacity; appointment of guardian advocate.—

111 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

112 (c) If a petition is filed pursuant to this section
113 requesting appointment of a guardian advocate for a minor who is
114 alleged to be developmentally disabled and is the subject of any
115 proceeding under chapter 39, the court with proper jurisdiction
116 over probate matters according to local rules of judicial

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117 administration and the Florida Probate Rules shall initiate
118 proceedings pursuant to this section when the minor reaches the
119 age of 17 years and 6 months or anytime thereafter. The minor
120 shall be provided all the due process rights conferred upon an
121 alleged developmentally disabled adult pursuant to this chapter.
122 The order of appointment of guardian advocate under this section
123 shall issue upon the minor's 18th birthday or as soon thereafter
124 as possible.

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

127 744.301 Natural guardians.-

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

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146 enters an order stating otherwise.

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

150 744.3021 Guardians of minors.—

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

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

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