

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1188

INTRODUCER: Senator Gruters

SUBJECT: Courts

DATE: April 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1188 assists public guardians as they seek to meet the needs of their incapacitated wards.

The bill clarifies that public guardians are exempted from paying any court-related fees or charges normally assessed by clerks for accessing public records. The bill also requires courts to waive court costs and filing fees in proceedings involving the appointment of a public guardian or the estate of a public guardian's ward. Currently, courts have the discretion to waive those costs and fees.

Finally, the bill allows additional medical personnel, physician assistants and advance practice registered nurses, to conduct the required annual medical exam of a ward and prepare a report of the exam for the court. Currently, only physicians are allowed to conduct the exams and prepare the reports.

The bill will have an indeterminate fiscal impact and has an effective date of July 1, 2019.

II. Present Situation:

Public Guardians

A public guardian is appointed to provide guardianship services to an incapacitated person if there is no family member, friend, or other person willing and qualified to serve.¹ Public

¹ Section 744.2007(1), F.S.

guardians generally and primarily serve incapacitated people who have limited financial means.^{2,3}

Circuit Court Clerks' Duty to Provide Access to Public Records and Waive Fees

The clerks of the circuit courts are required by s. 28.345(1), F.S., to provide public guardians and other entities access to public records, upon request, and without charge.⁴ Additionally, s. 28.345(2), F.S., exempts a public guardian, when acting in an official capacity, from all court-related fees and charges normally assessed by the clerks.⁵ While these two provisions make clear that a public guardian is entitled to free access to public records and that no fees or charges will be assessed against them for those records, the peculiar wording of s. 28.345(3), F.S., has created confusion among some clerks in the state.

Section 28.345(3), F.S. states that the exemptions from fees or charges “apply only to state agencies and state entities and the party represented by the agency or entity.” Several circuit court clerks have determined that public guardians are not state agencies or state entities, and are therefore required to pay the fees or charges for the public records they request. Other circuits read the statute differently and do not charge fees to the public guardians.

Court Discretion to Waive Costs and Filing Fees for Matters Involving Public Guardians

Florida's extensive guardianship laws are contained in ch. 744, F.S. The provisions dealing with the costs of public guardians provide that all costs of administration, including filing fees, shall be paid from the office of the public guardian and no costs of administration, including filing fees, shall be recovered from the assets or income of a ward.⁶ An additional statute provides that a court *may* waive any court costs or filing fees in any proceeding for appointment of a public guardian or in any proceeding involving the estate of a ward for whom a public guardian has been appointed.⁷ The court's ability to waive fees is permissive and not mandatory, such that the decision to impose or waive fees rests with the discretion of the court.

Annual Guardianship Plan and Physician's Report

Each guardian of the person must file with the court an annual guardianship plan that updates information about the ward's condition, including the ward's current needs and how those needs will be met in the coming year. The plan for an adult ward, if applicable, must include certain information concerning medical and mental health conditions as well as treatment and rehabilitation needs of the ward including:

- A resume of any professional medical treatment received during the preceding year.

² Section 744.2007(3), F.S.

³ The Executive Director of the Office of Public and Professional Guardians, after consulting the chief judge and other circuit judges and appropriate people, may establish an office of public guardian within a county or judicial circuit and provide a list of people best qualified to serve as public guardian. Section 744.2006, F.S.

⁴ Those additional entities include the state attorney, public defender, guardian ad litem, attorney ad litem, criminal conflict and civil regional counsel, and private court-appointed counsel paid by the state, and to authorized staff acting on their behalf Section 28.345(1), F.S.

⁵ Court-related fees and charges are also waived for judges and court staff acting on their behalf as well as state agencies. Section 28.345(2), F.S.

⁶ Section 744.2008(1), F.S.

⁷ Section 744.2008(2), F.S.

- A report by a physician who examined the ward at least 90 days before the beginning of the reporting period and which contains an evaluation of the ward's condition and current capacity.
- The plan for providing medical, mental health, and rehabilitative services for the coming year.

Proponents of this bill assert that at least 95 percent of the public guardians' wards live in nursing homes where physicians seldom visit. However, because the statute specifically requires a physician's report, courts will not accept the signature of a physician's assistant or an advanced practice registered nurse even though these professionals appear to be authorized to conduct these examinations within the scope of their practices.

III. Effect of Proposed Changes:

Clarifying Language for Court-related Fees and Charges

The bill adds language to s. 28.345(3), F.S., to clarify that public guardians are exempted from the clerks' assessment of fees and charges. This is accomplished by stating that the "entities listed in subsections (1) and (2)," the provisions where public guardians are specifically named, are exempted from fees or charges. This should resolve any ambiguity as to whether the public guardians are exempt from the fees and charges normally assessed by the clerks of courts.

Court's Discretion to Waive Court Costs and Filing Fees

Section 744.2008(2), F.S., is amended to mandate that a court "shall" waive any court costs or filing fees in proceedings for the appointment of a public guardian or in a proceeding involving the estate of a ward for whom a public guardian has been appointed. Accordingly, courts will be prohibited from imposing court costs or filing fees under those circumstances.

Annual Guardianship Plan and Physician's Report

The annual guardianship plan detailing a ward's needs and how those needs will be met is amended to permit a physician assistant or an advanced practice registered nurse to examine the ward and complete the report. The physician assistant must be acting pursuant to s. 458.347(4)(d), F.S., or s. 459.022(4)(d), F.S., under the supervision of a licensed physician, pursuant to a written protocol, and limited to the supervising physician's practice in connection with a county health department. The advanced practice registered nurse must operate within an established protocol and on site where the advanced practice registered nurse practices.⁸

By increasing the scope of who may examine the ward and determine his or her level of capacity for the annual report, the public guardian will be better able to meet the ward's needs and comply with the requirements of the guardianship statutes.

The bill takes effect July 1, 2019.

⁸ The advanced practice registered nurse may prescribe, dispense, or administer certain drugs, initiate appropriate therapies, perform additional functions as permitted by rule, order diagnostic tests and therapies, and order medications for administration to a patient in certain facilities. Section 464.012 (3), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will likely have a negative fiscal impact due to a loss of revenues to clerks and to the state court system to the extent that the bill waives fees and costs applied to public guardians. However, the bill may result in reduced costs for the annual medical exams for wards.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.345, 744.2008, and 744.3675.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
