

By Senator Albritton

26-00921C-20

20201648__

1 A bill to be entitled
2 An act relating to support for incapacitated adult
3 children; creating s. 61.1255, F.S.; defining the term
4 "incapacitated adult child"; specifying that parents
5 are responsible for supporting an incapacitated adult
6 child; requiring certain rights of the parents of an
7 incapacitated adult child to be established in a
8 guardianship proceeding; prohibiting any person who is
9 not court appointed from managing assets for or making
10 decisions for an incapacitated adult child; specifying
11 individuals who may file a petition to establish
12 support for an incapacitated adult child; specifying a
13 timeframe in which such petitions may be filed;
14 specifying procedures for establishing support;
15 specifying who may receive such support before and
16 after the incapacitated adult child's 18th birthday;
17 amending s. 61.13, F.S.; specifying that a child
18 support order need not terminate on the child's 18th
19 birthday in certain circumstances; specifying that a
20 court may modify a child support order for adult
21 children in certain circumstances; providing that
22 either parent may consent to mental health treatment
23 for the child in certain circumstances, unless stated
24 otherwise in the parenting plan; amending s. 61.29,
25 F.S.; specifying that support for incapacitated adult
26 children is determined by certain provisions; amending
27 s. 61.30, F.S.; specifying that the child support
28 guidelines apply to minor children and certain adult
29 children; creating s. 61.31, F.S.; specifying

26-00921C-20

20201648__

30 circumstances the court must consider when determining
31 the amount of support for an incapacitated adult
32 child; prohibiting the court from ordering support in
33 an amount that would negatively impact the
34 incapacitated adult child's eligibility for state or
35 federal programs or benefits; amending s. 393.12,
36 F.S.; providing an additional circumstance under which
37 a guardian advocate must be represented by an attorney
38 in guardianship proceedings; specifying that petitions
39 to appoint a guardian advocate for an individual with
40 disabilities may include certain requests for support
41 from the individual's parents; creating s. 744.1013,
42 F.S.; providing guardianship courts with jurisdiction
43 over petitions for support of incapacitated adult
44 children; providing for enforceability of such support
45 orders in a manner consistent with child support
46 orders entered under certain other provisions;
47 specifying that such support orders supersede any
48 orders entered under certain other provisions;
49 amending s. 744.3201, F.S.; specifying that petitions
50 for determination of capacity may include certain
51 requests for payment of support; creating s. 744.422,
52 F.S.; authorizing guardians of incapacitated adults to
53 petition the court for certain support payments from
54 the incapacitated adult's parents in certain
55 circumstances; specifying that the amount of such
56 support is determined by certain provisions; amending
57 ss. 742.031, 742.06, and 744.3021, F.S.; conforming
58 provisions to changes made by the act; providing an

26-00921C-20

20201648__

59 effective date.

60
61 Be It Enacted by the Legislature of the State of Florida:

62
63 Section 1. Section 61.1255, Florida Statutes, is created to
64 read:

65 61.1255 Support for incapacitated adult children; access;
66 powers of court.-

67 (1) For purposes of this section, an "incapacitated adult
68 child" means an unmarried adult who is incapable of self-support
69 as a result of a physical or mental incapacity that began before
70 the person attained the age of 18.

71 (2) The parent or parents of an incapacitated adult child
72 are responsible for supporting that child. The right of a parent
73 or other person to receive and manage support for or manage the
74 property of an incapacitated adult child or to make decisions to
75 meet essential requirements for the health or safety of the
76 incapacitated adult child must be established in a guardianship
77 proceeding under chapter 393 or chapter 744. A parent or other
78 person does not have the power to manage support for, manage
79 property of, or make decisions regarding needs that are
80 essential to the health and safety of an incapacitated adult
81 child unless he or she has been appointed as the incapacitated
82 adult child's guardian advocate under chapter 393 or guardian
83 under chapter 744.

84 (3) The right of a parent or other person to have access to
85 an incapacitated adult child or to decide where the
86 incapacitated adult child will live must be established in a
87 guardianship proceeding brought under chapter 393 or chapter

26-00921C-20

20201648__

88 744.

89 (4) A petition to establish support for an incapacitated
90 adult child may be filed only by:

91 (a) The incapacitated adult child, if his or her right to
92 sue or defend lawsuits has not been removed by the court;

93 (b) A parent or other person on behalf of the incapacitated
94 adult child if he or she has not been appointed a guardian
95 advocate under chapter 393 or a guardian under chapter 744; or

96 (c) The incapacitated adult child's guardian advocate
97 appointed under chapter 393 or guardian appointed under chapter
98 744.

99 (5) A petition to establish support for an incapacitated
100 adult child may be filed at any time after he or she reaches the
101 age of 17 years and 6 months.

102 (6) If a court has jurisdiction over the parties because of
103 an issue of child support, the parents may agree in writing to
104 extend support in the existing case, if the agreement is
105 submitted to the court for approval before the incapacitated
106 child reaches the age of 18. Otherwise, the amount of support to
107 be paid by one parent to the other must be established in a
108 guardianship proceeding.

109 (7) Support paid after the incapacitated child reaches the
110 age of 18 may be paid only to the incapacitated adult or his or
111 her court-appointed guardian advocate or guardian.

112 Section 2. Paragraph (a) of subsection (1) and paragraph
113 (b) of subsection (2) of section 61.13, Florida Statutes, are
114 amended to read:

115 61.13 Support of children; parenting and time-sharing;
116 powers of court.-

26-00921C-20

20201648__

117 (1) (a) In a proceeding under this chapter, the court may at
118 any time order either or both parents who owe a duty of support
119 to a child to pay support to the other parent or, ~~in the case of~~
120 ~~both parents,~~ to a third party who has custody in accordance
121 with the child support guidelines schedule in s. 61.30.

122 1. All child support orders and income deduction orders
123 entered on or after October 1, 2010, must provide:

124 a. For child support to terminate on a child's 18th
125 birthday unless the court finds or previously found that the
126 child or the child who is dependent in fact is 18 years of age,
127 is still in high school, and is performing in good faith with a
128 reasonable expectation of graduation before he or she reaches
129 the age of 19 ~~s. 743.07(2) applies,~~ or is otherwise agreed to by
130 the parties;

131 b. A schedule, based on the record existing at the time of
132 the order, stating the amount of the monthly child support
133 obligation for all the minor children at the time of the order
134 and the amount of child support that will be owed for any
135 remaining children after one or more of the children are no
136 longer entitled to receive child support; and

137 c. The month, day, and year that the reduction or
138 termination of child support becomes effective.

139 2. The court initially entering an order requiring one or
140 both parents to make child support payments has continuing
141 jurisdiction after the entry of the initial order to modify the
142 amount and terms and conditions of the child support payments if
143 the modification is found by the court to be in the best
144 interests of the child and; ~~when the child reaches majority; if~~
145 there is a substantial change in the circumstances of the

26-00921C-20

20201648__

146 parties; if the minor child or child who is dependent in fact
147 and is between the ages of 18 and 19, is still in high school
148 and is performing in good faith with a reasonable expectation of
149 graduation before he or she reaches the age of 19 ~~if s.~~
150 ~~743.07(2) applies;~~ or when a child is emancipated, marries,
151 joins the armed services, or dies. The court initially entering
152 a child support order has continuing jurisdiction to require the
153 obligee to report to the court on terms prescribed by the court
154 regarding the disposition of the child support payments.

155 (2)

156 (b) A parenting plan approved by the court must, at a
157 minimum:

158 1. Describe in adequate detail how the parents will share
159 and be responsible for the daily tasks associated with the
160 upbringing of the child;

161 2. Include the time-sharing schedule arrangements that
162 specify the time that the minor child will spend with each
163 parent;

164 3. Designate who will be responsible for:

165 a. Any and all forms of health care. If the court orders
166 shared parental responsibility over health care decisions, ~~the~~
167 ~~parenting plan must provide that~~ either parent may consent to
168 mental health treatment for the child, unless stated otherwise
169 in the parenting plan.

170 b. School-related matters, including the address to be used
171 for school-boundary determination and registration.

172 c. Other activities; and

173 4. Describe in adequate detail the methods and technologies
174 that the parents will use to communicate with the child.

26-00921C-20

20201648__

175 Section 3. Subsection (4) is added to section 61.29,
176 Florida Statutes, to read:

177 61.29 Child support guidelines; principles.—The following
178 principles establish the public policy of the State of Florida
179 in the creation of the child support guidelines:

180 (4) The guidelines do not apply to support for an
181 incapacitated adult child as defined in s. 61.1255. The amount
182 of support for an incapacitated adult child is determined by s.
183 61.31.

184 Section 4. Paragraph (a) of subsection (1) of section
185 61.30, Florida Statutes, is amended to read:

186 61.30 Child support guidelines; retroactive child support.—

187 (1)(a) The child support guideline amount as determined by
188 this section presumptively establishes the amount the trier of
189 fact shall order as child support for a minor child or child who
190 is dependent in fact, is between the ages of 18 and 19, is still
191 in high school and is performing in good faith with a reasonable
192 expectation of graduation before he or she reaches the age of 19
193 in an initial proceeding for such support or in a proceeding for
194 modification of an existing order for such support, whether the
195 proceeding arises under this or another chapter. The trier of
196 fact may order payment of child support which varies, plus or
197 minus 5 percent, from the guideline amount, after considering
198 all relevant factors, including the needs of the child or
199 children, age, station in life, standard of living, and the
200 financial status and ability of each parent. The trier of fact
201 may order payment of child support in an amount which varies
202 more than 5 percent from such guideline amount only upon a
203 written finding explaining why ordering payment of such

26-00921C-20

20201648__

204 guideline amount would be unjust or inappropriate.
205 Notwithstanding the variance limitations of this section, the
206 trier of fact shall order payment of child support which varies
207 from the guideline amount as provided in paragraph (11) (b)
208 whenever any of the children are required by court order or
209 mediation agreement to spend a substantial amount of time with
210 either parent. This requirement applies to any living
211 arrangement, whether temporary or permanent.

212 Section 5. Section 61.31, Florida Statutes, is created to
213 read:

214 61.31 Amount of support for incapacitated adult child.—

215 (1) In determining the amount of support to be paid after
216 an incapacitated adult child, as defined in s. 61.1255, reaches
217 the age of 18, the specific terms and conditions of that
218 support, and the rights and duties of both parents with respect
219 to the support of the child, the court shall determine and give
220 special consideration to all of the following:

221 (a) The incapacitated adult child's income and assets.

222 (b) Any existing and future needs of the incapacitated
223 adult child which are directly related to his or her mental or
224 physical incapacity and the substantial care and personal
225 supervision directly required by or related to that incapacity.

226 (c) Whether a parent pays for or will pay for the care or
227 supervision of the incapacitated adult child or provides or will
228 provide such care or supervision himself or herself.

229 (d) The financial resources available to each parent for
230 the support, care, and supervision of the incapacitated adult
231 child.

232 (e) Any other financial resources or other resources or

26-00921C-20

20201648__

233 programs available for the support, care, and supervision of the
234 incapacitated adult child.

235 (2) The court may not order support in an amount that will
236 negatively impact the incapacitated adult child's eligibility
237 for any state or federal programs or benefits.

238 Section 6. Paragraph (b) of subsection (2) and subsection
239 (3) of section 393.12, Florida Statutes, are amended to read:

240 393.12 Capacity; appointment of guardian advocate.—

241 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

242 (b) A person who is being considered for appointment or is
243 appointed as a guardian advocate does not need to ~~not~~ be
244 represented by an attorney unless required by the court or if
245 the guardian advocate is delegated any rights regarding property
246 other than the right to be the representative payee for
247 government benefits or the right of a parent to receive periodic
248 payments from the other parent for support, care, maintenance,
249 education, or other needs of the person with a developmental
250 disability. This paragraph applies only to proceedings relating
251 to the appointment of a guardian advocate and the court's
252 supervision of a guardian advocate and is not an exercise of the
253 Legislature's authority under ~~pursuant to~~ s. 2(a), Art. V of the
254 State Constitution.

255 (3) PETITION.—

256 (a) A petition to appoint a guardian advocate for a person
257 with a developmental disability may be executed by an adult
258 person who is a resident of this state. The petition must be
259 verified and must:

260 1. ~~(a)~~ State the name, age, and present address of the
261 petitioner and his or her relationship to the person with a

26-00921C-20

20201648__

262 developmental disability;

263 ~~2.(b)~~ State the name, age, county of residence, and present
264 address of the person with a developmental disability;

265 ~~3.(e)~~ Allege that the petitioner believes that the person
266 needs a guardian advocate and specify the factual information on
267 which such belief is based;

268 ~~4.(d)~~ Specify the exact areas in which the person lacks the
269 decisionmaking ability to make informed decisions about his or
270 her care and treatment services or to meet the essential
271 requirements for his or her physical health or safety;

272 ~~5.(e)~~ Specify the legal disabilities to which the person is
273 subject; and

274 ~~6.(f)~~ State the name of the proposed guardian advocate, the
275 relationship of that person to the person with a developmental
276 disability; the relationship that the proposed guardian advocate
277 had or has with a provider of health care services, residential
278 services, or other services to the person with a developmental
279 disability; and the reason why this person should be appointed.
280 If a willing and qualified guardian advocate cannot be located,
281 the petition shall so state.

282 (b) A petition to appoint a guardian advocate may include a
283 request for periodic payments from either or both parents of the
284 person with a developmental disability for his or her support,
285 care, maintenance, education, or other needs of the person with
286 a developmental disability.

287 Section 7. Section 744.1013, Florida Statutes, is created
288 to read:

289 744.1013 Jurisdiction.—The court has jurisdiction over all
290 claims for support of an incapacitated adult child, as defined

26-00921C-20

20201648__

291 in s. 61.1255, and shall adjudicate the financial obligation,
292 including health insurance, of the incapacitated adult child's
293 parents or guardian and enforce the financial obligation as
294 provided in chapter 61. All support required to be paid in
295 relation to an incapacitated adult child over the age of 18 must
296 be paid to the incapacitated adult child or his or her court-
297 appointed guardian. The Department of Revenue shall enforce
298 support orders entered under this chapter or chapter 393 in the
299 same manner that it enforces child support orders under chapter
300 61. Any order for support entered in a proceeding under this
301 chapter or chapter 393 takes precedence over any support order
302 entered under chapter 61.

303 Section 8. Present subsection (3) of section 744.3201,
304 Florida Statutes, is redesignated as subsection (4), and a new
305 subsection (3) is added to that section, to read:

306 744.3201 Petition to determine incapacity.-

307 (3) A petition to determine capacity may include a request
308 for payment of support, care, maintenance, education, or other
309 needs of the alleged incapacitated adult child under s. 61.1255.

310 Section 9. Section 744.422, Florida Statutes, is created to
311 read:

312 744.422 Petition for child support for incapacitated adult
313 child.-Pursuant to s. 61.1255, a guardian may petition the court
314 for an order requiring either or both parents to pay periodic
315 amounts for the support, care, maintenance, education, and other
316 needs of an incapacitated adult child, if not otherwise provided
317 for in the guardianship plan. The amount of support is
318 determined by s. 61.31.

319 Section 10. Subsection (1) of section 742.031, Florida

26-00921C-20

20201648__

320 Statutes, is amended to read:

321 742.031 Hearings; court orders for support, hospital
322 expenses, and attorney's fee.—

323 (1) Hearings for the purpose of establishing or refuting
324 the allegations of the complaint and answer shall be held in the
325 chambers and may be restricted to persons, in addition to the
326 parties involved and their counsel, as the judge in his or her
327 discretion may direct. The court shall determine the issues of
328 paternity of the child and the ability of the parents to support
329 the child. Each party's social security number shall be recorded
330 in the file containing the adjudication of paternity. If the
331 court finds that the alleged father is the father of the child,
332 it shall so order. If appropriate, the court shall order the
333 father to pay the complainant, her guardian, or any other person
334 assuming responsibility for the child moneys sufficient to pay
335 reasonable attorney ~~attorney's~~ fees, hospital or medical
336 expenses, cost of confinement, and any other expenses incident
337 to the birth of the child and to pay all costs of the
338 proceeding. Bills for pregnancy, childbirth, and scientific
339 testing are admissible as evidence without requiring third-party
340 foundation testimony, and shall constitute prima facie evidence
341 of amounts incurred for such services or for testing on behalf
342 of the child. The court shall order either or both parents owing
343 a duty of support to the child to pay support under chapter 61
344 ~~pursuant to s. 61.30~~. The court shall issue, upon motion by a
345 party, a temporary order requiring child support for a minor
346 child under ~~pursuant to~~ s. 61.30 pending an administrative or
347 judicial determination of parentage, if there is clear and
348 convincing evidence of paternity on the basis of genetic tests

26-00921C-20

20201648__

349 or other evidence. The court may also make a determination of an
350 appropriate parenting plan, including a time-sharing schedule,
351 in accordance with chapter 61.

352 Section 11. Section 742.06, Florida Statutes, is amended to
353 read:

354 742.06 Jurisdiction retained for future orders.—The court
355 shall retain jurisdiction of the cause for the purpose of
356 entering such other and further orders as changing circumstances
357 of the parties may in justice and equity require. Modifications
358 of child support and timesharing are determined under chapter
359 61.

360 Section 12. Subsection (4) of section 744.3021, Florida
361 Statutes, is amended to read:

362 744.3021 Guardians of minors.—

363 (4) If a petition is filed under ~~pursuant to~~ this section
364 requesting appointment of a guardian for a minor who is the
365 subject of any proceeding under chapter 39 or chapter 61 and who
366 is aged 17 years and 6 months or older, the court division with
367 jurisdiction over guardianship matters has jurisdiction over the
368 proceedings under s. 744.331. The alleged incapacitated minor
369 under this subsection shall be provided all the due process
370 rights conferred upon an alleged incapacitated adult under
371 ~~pursuant to~~ this chapter and applicable court rules. The order
372 of adjudication under s. 744.331 and the letters of limited or
373 plenary guardianship may issue upon the minor's 18th birthday or
374 as soon thereafter as possible. Any proceeding pursuant to this
375 subsection shall be conducted separately from any other
376 proceeding.

377 Section 13. This act shall take effect July 1, 2020.