

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 211 Courts

**SPONSOR(S):** Civil Justice Subcommittee, Fernandez-Barquin and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 344

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Jones	Luczynski
2) Justice Appropriations Subcommittee	11 Y, 0 N	Smith	Gusky
3) Judiciary Committee	16 Y, 0 N	Jones	Luczynski

### SUMMARY ANALYSIS

A public guardian is appointed to provide guardianship services to an incapacitated person, known as a "ward," if there is no family member, friend, or other person willing and qualified to serve. Public guardians generally serve incapacitated wards with limited financial resources. Each guardian must file with the court an annual guardianship plan with updated information about the ward's condition.

Under current law, there exists an ambiguity as to whether the clerks of circuit court must waive court-related costs, and the fees for a public records request, for a public guardian. Section 28.345, F.S., appears internally inconsistent as to whether a clerk must exempt public guardians from those fees; moreover, s. 744.2008, F.S., states that a court "may" waive those fees or costs. As a result, some clerks waive the fees and costs, and others do not, creating an inconsistent, patchwork system within the state. Additionally, current law requires that a guardianship plan must include the report of a physician who examined the ward.

CS/HB 211 clarifies that public guardians are exempt from the clerks' assessment of fees and charges. The bill also provides that, under certain circumstances, a physician may delegate to a qualified physician assistant or advanced practice registered nurse the duty to conduct the medical examination, and prepare and sign the required report.

The bill would have an indeterminate fiscal impact on state and local governments.

The bill has an effective date of July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Guardians

When a court determines that a person lacks the capacity to manage his or her property or take care of his or her health and safety, it declares the person "incapacitated," and a guardian is needed to take care of the person's interests.<sup>1</sup> If the person has no family member or friend willing and qualified to serve as guardian, the court may appoint a public guardian.<sup>2</sup> Public guardians generally and primarily serve incapacitated people, or "wards," with limited financial resources.<sup>3,4</sup>

##### Circuit Clerk's Duty to Provide Public Records and Waive Fees

Section 28.345(1), F.S., requires the clerks of the circuit courts to provide public guardians and other enumerated entities access to public records without charge upon request. 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 clerks.<sup>5</sup> While these two provisions make clear that a public guardian is entitled free access to public records and that no fees or charges will be assessed 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, considering public guardians not to be "state agencies" or "state entities," have required them to pay the fees or charges for public records. Other circuits read the statute differently and do not charge the public guardians.

##### Court's Discretion to Waive Costs and Filing Fees for 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.<sup>6</sup> Another 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.<sup>7</sup> The court's ability to waive fees is permissive and not mandatory, leaving the decision within the court's discretion.

##### Annual Guardianship Plan and Physician's Report

Each guardian 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.<sup>8</sup> 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;

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<sup>1</sup> S. 744.102(12), F.S.

<sup>2</sup> S. 744.2007(1), F.S.

<sup>3</sup> S. 744.2007(3), F.S.

<sup>4</sup> The Executive Director of the Office of Public and Professional Guardians, after consulting the chief judge and other circuit judges and appropriate persons, may establish an office of public guardian within a county or judicial circuit and provide a list of persons best qualified to serve as public guardian. S. 744.2006, F.S.

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

<sup>6</sup> S. 744.2008(1), F.S.

<sup>7</sup> S. 744.2008(2), F.S.

<sup>8</sup> S. 744.3675, 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; and
- The plan for providing medical, mental health, and rehabilitative services for the coming year.<sup>9</sup>

Proponents of this bill assert that at least 95 percent of the public guardians' wards live in nursing homes where physicians seldom visit. However, the current statute specifically requires a physician's report; therefore, a court will not accept a medical evaluation report with the signature of a physician's assistant or an advanced practice registered nurse, even though these professionals are authorized to conduct these examinations.

## **Effect of Proposed Changes**

### Court-Related Fees and Charges

CS/HB 211 clarifies that public guardians are exempt from the clerks' assessment of fees and charges. Specifically, the bill amends s. 28.345, F.S., to indicate that all entities listed in subsections (1) and (2) of the statute—which includes public guardians—are exempt 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 clerks of courts.

The bill also amends s. 744.2008, F.S., 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. Under the bill, courts will no longer have the discretion to impose costs or filing fees upon public guardians, removing inconsistency as to this issue.

### Annual Guardianship Plan and Physician's Report

CS/HB 211 expands the list of persons that may perform the medical examination and sign the report. Specifically, if the guardian asks a physician to complete the examination, the physician may delegate the responsibility to perform the examination and sign the report to:

- A physician assistant acting pursuant to s. 458.347(4)(h) or s. 459.022(4)(g), F.S.;<sup>10</sup> or
- An advanced practice registered nurse acting pursuant to s. 464.012(3), F.S.

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 has an effective date of July 1, 2020.

## **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 28.345, F.S., relating to state access to records; exemption from court-related fees and charges.

**Section 2:** Amends s. 744.2008, F.S., relating to costs of public guardian.

**Section 3:** Amends s. 744.3675, F.S., relating to annual guardianship plan.

**Section 4:** Provides an effective date of July 1, 2020.

<sup>9</sup> S. 744.3675(1), F.S.

<sup>10</sup> Ss. 458.347(4)(h) and 459.022(4)(g), F.S., permit a supervising physician to delegate to a physician assistant the performance of services within the physician assistant's practice, and in accordance with his or her education and training, unless prohibited by law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill will reduce revenue collected from court filing fees that are sent to the Department of Revenue by an indeterminate, but likely insignificant amount. See fiscal comments.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill will reduce revenue collected from court filing fees that are retained by the Clerk by an indeterminate, but likely insignificant amount. See fiscal comments.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in reduced costs for the annual medical exams for wards.

### D. FISCAL COMMENTS:

Currently, it is not known if any clerk charges the listed entities for public records costs. However, some clerks charge filing fees based on s. 744.2008(1), F.S., that specifically requires public guardians to pay for filing fees "from the budget of the office public guardian." However, CCOC expects the impact to be relatively small as many public guardian filings are already accompanied by Affidavits for Indigency and most clerks already waive these fees. For example, from 2015-2019, one medium-sized county had 23 public guardian cases. In six of these cases, the public guardians paid filing fees totaling \$3,845. In the remaining 17 cases, the filing fees were waived by the court.<sup>11</sup>

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The county mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires court clerks to waive certain fees; however, an exemption may apply because the fiscal impact is likely to be insignificant.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

Not applicable.

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<sup>11</sup> Florida Clerks of Court Operations Corporation, *CCOC Bill Analysis – HB 211*, October 17, 2019.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 14, 2019, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that public guardians are not required to pay court costs or filing fees.
- Clarified that a physician requested by a guardian to examine a ward and prepare the report may delegate these responsibilities to an authorized medical person.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.