

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 Judiciary

BILL: CS/SB 344

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Courts

DATE: November 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			CF	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 344 clarifies ambiguities in current law to better enable public guardians 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 a physician assistant or advanced practice registered nurse to complete a ward's annual medical evaluation and prepare and sign the report for the court, when the physician delegates that responsibility. Currently, only physicians are allowed to conduct the annual medical exams and prepare the reports.

The bill takes effect July 1, 2020.

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

According to the Department of Elder Affairs, which houses the Office of Public and Professional Guardians, the 17 public guardian programs in the state served 3,816 wards in Fiscal Year 2018-19.⁴ A program cost and activities report issued in March, 2019, stated that 42.00% of wards lived in nursing facilities, 22.99% lived in assisted living facilities, 15.40% lived in group homes, 6.31% were in hospitals, 5.55% lived in intermediate care facilities, and 4.04% were cared for in private homes. The remaining wards, who account for less than 4% of that population, were cared for in other living arrangements.⁵

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.⁶ 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.⁷ While these two provisions make clear that public guardians are 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.

¹ Section 744.2007(1), F.S.

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 Telephone interview with Scott Read, Legislative Affairs Director for the Department of Elder Affairs, in Tallahassee, Fla. (October 31, 2019).

⁵ Pamela B. Teaster, Wen You, and Saman Mohsenirad, *Florida Public Guardian Programs: Program Costs and Activities, Report for the Office of Public and Professional Guardians, Florida Department of Elder Affairs* (March 2019) (on file with the Senate Committee on Judiciary).

⁶ 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.

⁷ 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.

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 budget of 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.⁸ 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.⁹ 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.¹⁰ 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.
- 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.¹¹

As noted above, the majority of public guardians' wards live in facilities 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.

⁸ Section 744.2008(1), F.S.

⁹ Section 744.2008(2), F.S.

¹⁰ Section 744.3675, F.S.

¹¹ Section 744.3675(1)(b), F.S.

Court's Discretion to Waive Court Costs and Filing Fees

Section 744.2008(1), F.S., is also amended for consistency to clarify that filing fees will not be assessed against a public guardian as a cost of administration. By deleting the phrase "including filing fees" the language makes clear that filing fees are not to be charged against the public guardian, which is consistent with the changes made to s. 28.345(3), F.S., If the phrase remained in the statute, it could create ambiguity as to whether filing fees may be assessed.

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 requirements for the annual guardianship plan that details a ward's needs and how those needs will be met is amended to expand the type of medical professionals who may be involved. If a guardian requests a ward's physician to complete the medical evaluation and prepare the report and the physician delegates that responsibility, a physician assistant or an advanced practice registered nurse may complete the examination and prepare and sign the report. The physician assistant must be acting pursuant to s. 458.347(4)(h), F.S., or s. 459.022(4)(g), F.S., by performing services delegated by a supervising physician in the physician assistant's practice in accordance with his or her education and training, unless expressly prohibited by law or rule. The advanced practice registered nurse must operate within an established protocol and on site where the advanced practice registered nurse practices.¹²

By increasing the type of medical professionals who may complete the examination and determine a ward's 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, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹² 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.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Clerks of Court Operations Corporation (CCOC) states in its fiscal summary¹³ that the bill will have a slight indeterminate negative fiscal impact for some clerks who currently charge filing fees based on their interpretation of a statute requiring public guardians to pay filing fees from the budget of the office of public guardian.¹⁴ The analysis concludes by stating that the CCOC estimates the impact of the bill will be relatively small because many of the public guardian filings are accompanied by an affidavit demonstrating indigency such that most clerks currently waive those filing fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹³ Florida Clerks of Court Operations Corporation, *Senate Bill 344 Fiscal Analysis*, (Oct. 2019) available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=29337>.

¹⁴ Section 744.2008(1), F.S., provides that “All costs of administration, including filing fees, shall be paid from the budget of the office of public guardian. No costs of administration, including filing fees, shall be recovered from the assets or the income of the ward.”

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 Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on November 5, 2019:

The committee substitute differs from the underlying bill by:

- Deleting a reference to filing fees in s. 744.2008(1), F.S., that could create ambiguity as to whether clerks may charge public guardians for filing fees; and
- Clarifying that a physician assistant or advanced practice nurse practitioner may complete the ward's annual exam and prepare and sign the report when those responsibilities are delegated by the ward's physician in s. 744.3675(1)2., F.S.

- B. **Amendments:**

None.