

**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.)

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

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BILL: SB 1710

INTRODUCER: Senators Bradley and Brandes

SUBJECT: Guardianship

DATE: January 24, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	<b>Pre-meeting</b>
2.			AP	
3.			RC	

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**I. Summary:**

SB 1710 requires the Department of Elder Affairs (the DOEA) to create and maintain a publicly available, real-time dashboard containing data relating to guardianship matters across the state. The bill requires clerks of court to gather and transmit specific data points to the DOEA, and requires the DOEA to collect specified data on professional guardians and those identified by clerks of court for certain purposes.

The bill permits the DOEA to include financial audits performed by clerks of court in guardianship cases as part of a tool used by the agency to monitor professional guardians. The bill also requires the DOEA to develop a tool to collect data from the following items in a guardianship case:

- The initial guardianship report;
- The initial guardianship plan;
- The verified inventory;
- The annual guardianship report; and
- Audits conducted by clerks of court pursuant to s. 744.368, F.S.

The bill specifies that information collected by the DOEA that is exempt from Florida’s public disclosure requirements will remain exempt once submitted to and held by the agency, and that the DOEA may only disclose such information if given written authorization to do so by the agency which provided the information. The bill also provides legislative findings and intent.

The bill is anticipated to have a negative fiscal impact on the DOEA due to the cost of creating and maintaining the database and dashboard. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

## II. Present Situation:

### Guardianship

When an individual is unable to make legal decisions regarding his or her person or property, a guardian may be appointed to act on his or her behalf. A guardian is someone who is appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person or property or both.<sup>1</sup> Adjudicating a person totally incapacitated and in need of a guardian deprives a person of his or her civil and legal rights.<sup>2</sup> The Legislature has recognized that the least restrictive form of guardianship should be used to ensure the most appropriate level of care and the protection of that person's rights.<sup>3</sup>

The process to determine an individual's incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person is incapable of exercising.<sup>4</sup> Once a person has been adjudicated incapacitated, termed a "ward", the court appoints a guardian and the letters of guardianship are issued.<sup>5</sup> The order appointing a guardian must be consistent with the ward's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.<sup>6</sup>

### Types of Guardians

#### *Two Main Forms of Guardianship*

There are two main forms of guardianship:

- Guardianship over the person; or
- Guardianship over the property, which may be limited or plenary.<sup>7</sup>

For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily.<sup>8</sup> However, when an individual's mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court appointed examination committee.<sup>9</sup>

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<sup>1</sup> Section 744.102(9), F.S.

<sup>2</sup> Section 744.1012(1), F.S.

<sup>3</sup> Section 744.1012(2), F.S.

<sup>4</sup> Section 744.3201, F.S.

<sup>5</sup> See s. 744.345, F.S.

<sup>6</sup> Section 744.2005, F.S.

<sup>7</sup> See generally, s. 744.102(9), F.S. A plenary guardian exercises all delegable rights and powers of the ward after a court has determined that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

<sup>8</sup> Section 744.341(1), F.S.

<sup>9</sup> See generally, s. 744.102(12), F.S.

### ***Natural Guardians***

Parents are considered natural guardians of their biological and adopted children, up until the time that their children cease to be minors, or unless the parents' parental rights have been terminated.<sup>10</sup>

### ***Guardian Advocates***

Guardian advocates are appointed by the court for persons with developmental disabilities.<sup>11</sup> A circuit court may appoint a guardian advocate, without an adjudication of incapacity, for a developmentally disabled individual if the person:

- Lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person, property, or estate; or
- Has voluntarily petitioned for the appointment of a guardian advocate.<sup>12</sup>

### ***Voluntary Guardians***

A court may appoint a voluntary guardian for a person who:

- Is incapable of the care, custody, and management of his or her estate by reason of age or physical infirmity; and
- Has voluntarily petitioned for the appointment.<sup>13</sup>

The petition must be accompanied by a certificate of a licensed physician specifying that he or she has examined the petitioner and that the petitioner is competent to understand the nature of the guardianship and his or her delegation of authority.<sup>14</sup> Notice of hearing on any petition for appointment and for authority to act must be given to the petitioner and to any person requested by the petitioner.<sup>15</sup> Such request may be made in the petition for appointment of guardian or in a subsequent written request for notice signed by the petitioner.<sup>16</sup>

Unless the voluntary guardianship is limited, a voluntary guardian appointed has the same duties and responsibilities as are provided by law for plenary guardians of the property.<sup>17</sup> A voluntary guardianship may be terminated by the ward by filing a notice with the court that the voluntary guardianship is terminated.<sup>18</sup>

### ***Successor Guardians***

A successor guardian must be appointed and duly qualified before a guardian can be relieved of their duties.<sup>19</sup> A successor guardian can only be appointed if a guardian dies, becomes

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<sup>10</sup> Section 744.301(1), F.S.

<sup>11</sup> Section 744.102(11), F.S.

<sup>12</sup> Section 744.3085, F.S.

<sup>13</sup> Section 744.341(1), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Section 744.341(3), F.S.

<sup>18</sup> Section 744.341(5), F.S.

<sup>19</sup> Section 744.471, F.S.

incapacitated, or is removed. Successor guardians are governed by the laws concerning guardianships.<sup>20</sup>

### **Appointment of a Guardian**

The following may be appointed guardian of a ward:

- Any resident of Florida who is 18 years of age or older and has full legal rights and capacity;
- A nonresident if he or she is related to the ward by blood, marriage, or adoption;
- A trust company, a state banking corporation, or state savings association, or a national banking association or federal savings and loan association, provided the entity is authorized and qualified to exercise fiduciary powers in Florida;
- A nonprofit corporation organized for religious or charitable purposes and existing under the laws of Florida;
- A judge who is related to the ward by blood, marriage, or adoption, or has a close relationship with the ward or the ward's family, if he or she serves without compensation;
- A provider of health care services to the ward, whether direct or indirect, when the court specifically finds that there is no conflict of interest with the ward's best interests; or
- A for-profit corporation that meets certain qualifications, including being wholly owned by the person who is the circuit's public guardian in the circuit where the corporate guardian is appointed.<sup>21</sup>

Guardians<sup>22</sup> who are not professional guardians are required to complete eight hours of instruction and training through a course approved by the chief judge of the circuit court and taught by a court-approved organization within four months after being appointed to a ward.<sup>23</sup> The instruction and training must cover:

- The legal duties and responsibilities of the guardian;
- The rights of the ward;
- The availability of local resources to aid the ward; and
- The preparation of habilitation plans and annual guardianship reports, including financial accounting for the ward's property.<sup>24</sup>

### **Examining Committees**

Section 744.331, F.S., sets forth the procedures for determining whether a person is incapacitated. The notice of filing of a petition to determine incapacity and the petition for appointment of a guardian must be read to the alleged incapacitated person.<sup>25</sup> The alleged incapacitated person must be provided with an attorney, who cannot serve as the guardian or counsel for the guardian.<sup>26</sup> Within five days of filing a petition for determination of incapacity, the court must appoint an examining committee consisting of three members, which must include a psychiatrist or physician and two other persons, such as a psychologist, a nurse, social worker,

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<sup>20</sup> *Id.*

<sup>21</sup> Section 744.309, F.S.

<sup>22</sup> Other than a parent who is the guardian of the property of a minor child.

<sup>23</sup> Section 744.3145, F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 744.331(1), F.S.

<sup>26</sup> Section 744.331(2)(c), F.S.

gerontologist, or other qualified persons with sufficient knowledge, skill, experience, or training.<sup>27</sup>

Each committee member must examine the person and then issue a report evaluating the person's mental health, functional ability, and physical health.<sup>28</sup> The examining committee members must each submit their examining reports within 15 days after appointment.<sup>29</sup> Within three days after the report is filed and at least 10 days before the hearing, a copy of the committee member's report must be served on the petitioner and on the attorney for the alleged incapacitated person.<sup>30</sup> If the committee determines that the person is not incapacitated in any respect, the court must dismiss the petition.<sup>31</sup> However, if at least two of the three examining committee members conclude the person is incapacitated in some respect, the court proceeds to a hearing on the petition and makes a final determination based on the evidence presented by the parties.<sup>32</sup>

### **Emergency Temporary Guardianship**

A court may appoint an emergency temporary guardian<sup>33</sup> for an allegedly incapacitated person upon a finding that there appears to be an imminent danger that:

- The physical or mental health or safety of the person will be seriously impaired; or
- The person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.<sup>34</sup>

Under those circumstances, a court may appoint an emergency temporary guardian after the filing of a petition for determination of incapacity and before the appointment of a guardian.<sup>35</sup> The court must appoint counsel to represent the alleged incapacitated person during the proceedings.<sup>36</sup> Further, the court may appoint an emergency temporary guardian on its own motion if no petition for appointment of guardian has been filed when the order determining incapacity is entered.<sup>37</sup>

### **Office of Public and Professional Guardians**

In 1999, the Legislature created the "Public Guardianship Act" and established the Statewide Public Guardianship Office (SPGO) within the DOEA.<sup>38</sup> In 2016, the Legislature renamed the Statewide Public Guardianship Office within the DOEA as the Office of Public and Professional Guardians (OPPG), required OPPG to regulate professional guardians and investigate complaints, and added six full-time equivalent positions to the OPPG, including an attorney and

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<sup>27</sup> Section 744.331(3)(a), F.S.

<sup>28</sup> Section 744.331(3)(e)-(f), F.S.

<sup>29</sup> Section 744.331(3)(e), F.S.

<sup>30</sup> Section 744.331(3)(h), F.S.

<sup>31</sup> Section 744.331(4), F.S.

<sup>32</sup> Section 744.331(5), F.S.

<sup>33</sup> Section 744.3031(1), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Section 744.3031(2), F.S.

<sup>38</sup> Chapter 99-277, L.O.F.

investigators.<sup>39</sup> The OPPG appoints local public guardian offices to provide guardianship services to people who have neither adequate income nor assets to afford a private guardian, nor any willing family or friend to serve.<sup>40</sup>

There are 17 public guardian offices that serve all 67 counties.<sup>41</sup> Since 2016, approximately 550 professional guardians have registered with the OPPG.<sup>42</sup>

### ***Complaint Investigations***

Any person may submit a complaint against a professional guardian to the OPPG. Once the OPPG receives a complaint, it is required to:

- Review and, if determined legally sufficient,<sup>43</sup> investigate complaints against professional guardians;
- Initiate an investigation no later than 10 business days after the OPPG receives a complaint;
- Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and person filing the complaint within 60 days;
- Obtain supporting information, including interviewing the ward, family member, or interested party, or documentation to determine the legal sufficiency of a complaint;
- Dismiss any complaint that is not legally sufficient; and
- Coordinate with the clerks of the court to avoid duplication of duties.

According to the DOEA, the annual numbers of complaints filed against a guardian or involving a guardianship since 2016 are as follows:

- 183 in 2016;
- 132 in 2017;
- 56 in 2018;
- 113 in 2019;
- 169 in 2020; and
- 89 in the first 6-months of 2021.<sup>44</sup>

The annual number of public records requests regarding OPPG complaints since 2017 are as follows:

- 17 in 2017;
- 11 in 2018;
- 63 in 2019;
- 31 in 2020; and

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<sup>39</sup> Chapter 2016-40, L.O.F.

<sup>40</sup> The DOEA, *Office of Public and Professional Guardians*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited January 22, 2022).

<sup>41</sup> The DOEA, *Office of Public and Professional Guardians (OPPG)*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited January 23, 2022).

<sup>42</sup> *Id.*

<sup>43</sup> Section 744.2004(1), F.S., states that a complaint is legally sufficient if it contains ultimate facts that show a violation of a standard of practice by a professional guardian has occurred.

<sup>44</sup> Email from Derek Miller, Legislative Affairs Director, the DOEA, August 26, 2021 (on file with the Senate Children, Families, and Elder Affairs Committee).

- 48 in the first 8-months of 2021.<sup>45</sup>

### **Public and Professional Guardians**

A professional guardian is a guardian who has at any time rendered services to three or more wards as their guardian; however, a person serving as a guardian for two or more relatives is not considered a professional guardian.<sup>46</sup> A public guardian is considered a professional guardian for purposes of regulation, education, and registration.<sup>47</sup>

### **Registration**

A professional guardian must register with the OPPG annually.<sup>48</sup> As part of the registration, the professional guardian must:

- Provide sufficient information to identify the professional guardian;
- Complete a minimum of 40 hours of instruction and training through a course approved or offered by the OPPG;<sup>49</sup>
- Successfully pass an examination approved by the DOEA to demonstrate competency to act as a professional guardian;
- Undergo a criminal background check by the Federal Bureau of Investigation and the Florida Department of Law Enforcement;
- Submit to a credit history check; and
- Maintain a current blanket bond.<sup>50, 51</sup>

Guardians registered with the OPPG must complete a minimum of 16 hours of continuing education every two calendar years after the year in which the initial 40-hour educational requirement is met. The ward's assets may not be used to pay for such education.<sup>52</sup>

Guardians seeking appointment by the court and all employees of a professional guardian who have a fiduciary responsibility to the ward must submit to a credit history check and undergo a level 2 background screening.<sup>53</sup> The DOEA must ensure the clerks of the court and the chief judge of each judicial circuit receive information about each registered professional guardian.<sup>54</sup>

The executive director of the OPPG may deny registration to a professional guardian if the executive director determines that the guardian's proposed registration, including the guardian's credit or criminal investigations, indicates that registering the professional guardian would

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<sup>45</sup> *Id.*

<sup>46</sup> Section 744.102(17), F.S.

<sup>47</sup> *Id.*

<sup>48</sup> Section 744.2002, F.S.

<sup>49</sup> This training may not be paid with the assets of the ward.

<sup>50</sup> Section 744.2003(2), F.S., further requires the bond to be maintained by the guardian in an amount not less than \$50,000 and must cover all wards for whom the guardian has been appointed at any given time. The liability of the provider of the bond is limited to the face amount of the bond, regardless of the number of wards for whom the professional guardian has been appointed.

<sup>51</sup> Sections 744.2002(3) and 744.3135, F.S.

<sup>52</sup> Section 744.2003(3), F.S.

<sup>53</sup> Section 744.3135(1), F.S.

<sup>54</sup> Section 744.2002(9), F.S.

violate any provision of ch. 744, F.S.<sup>55</sup> The OPPG is required to report any suspension or revocation of a professional guardian's registration to the court of competent jurisdiction for any guardianship case to which the professional guardian is currently appointed.<sup>56</sup>

### **Responsibilities of the Clerk of the Circuit Court**

In addition to the duty to serve as the custodian of the guardianship files, the clerk must review each initial and annual guardianship report to ensure that it contains required information about the ward.<sup>57</sup> Guardians are required to file initial reports and annual reports consisting of accounting or guardianship plans after they are appointed to a ward.<sup>58</sup> The initial guardianship report, for a guardian of a ward's property, must consist of a verified inventory of such property.<sup>59</sup> For a guardian of a person, the initial guardianship report must consist of an initial guardianship plan, including details such as where the ward will live and any medical or social services the ward may need.<sup>60</sup> Annual plans must consist of an annual accounting of the ward's property and the process by which the ward is being served by the guardian.<sup>61</sup>

The clerk is required to complete his or her review of the initial or annual report within 30 days after the filing of such reports.<sup>62</sup> The clerk is also required to audit the verified inventory and accountings report within 90 days of its filing, and report his or her findings to the court.<sup>63</sup> The clerk must notify the court when a required report is not timely filed by a guardian.<sup>64</sup>

If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship.<sup>65</sup>

If a guardian fails to produce records and documents to the clerk upon request, the clerk may request the court to enter an order requiring a guardian to file the report.<sup>66</sup> The judge may also impose sanctions on the guardian, which may include contempt, removal of the guardian, and fines.<sup>67</sup>

### **Guardianship Improvement Task Force**

In the summer of 2021, the Florida Court Clerks and Comptrollers organized the Guardianship Improvement Task Force (Task Force), which examined numerous aspects of Florida's

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<sup>55</sup> Section 744.2002, F.S.

<sup>56</sup> Section 744.2004(4), F.S.

<sup>57</sup> Section 744.368, F.S.

<sup>58</sup> Section 744.361, F.S.

<sup>59</sup> Section 744.362, F.S.,

<sup>60</sup> Sections 744.362–744.363, F.S.

<sup>61</sup> Section 744.367, F.S.

<sup>62</sup> Section 744.368(2), F.S.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Sections 744.368–744.3685, F.S.

<sup>67</sup> Sections 744.3685(3) and 744.367(5), F.S.



guardianship system and laws.<sup>68</sup> The Task Force was formed with the goal of studying the current status of guardianships in Florida and making recommendations to improve the safety of wards across Florida.<sup>69</sup> The Task Force was comprised of 22 members, including judges, clerks of court, members of the Legislature, attorneys, state agencies, and numerous others.<sup>70</sup>

### ***Task Force Report***

On November 15, 2021, the Task Force finalized a report summarizing their work and containing numerous legislative recommendations.<sup>71</sup> Recommendations encompassed the following nine focus areas:

- Statewide Guardianship Data Transparency;
- Statewide Uniformity in Forms, Processes, and Practices;
- Increased Oversight, Safeguards, and Court Monitoring Practices Across the State;
- Preserving the Rights, Dignity, and Autonomy of Alleged and Adjudged Incapacitated Persons;
- Ensuring the Use of Least Restrictive Alternatives (including Advance Directives and Supported Decision-Making);
- Health and Residential Care “Pipeline to Guardianship”;
- Enhanced Education and Qualification Requirements of Professionals and Parties in Guardianship;
- Increased Accessibility and Transparency of Professional Guardians and the Guardianship Process; and
- Need for Additional Workgroup(s) Responsible for Assessing Florida’s Guardianship System.<sup>72</sup>

The report concluded that the most significant issue addressed by the Task Force was the need for a method to improve the availability of data in order to document problems within Florida’s guardianship system.<sup>73</sup> The report further stated that a great deal of basic information related to guardianship cases is not readily available, including but not limited to:

- The number of people under guardianship;
- The number of guardians across the state;
- How many cases each guardian has under their purview;
- How much money and property are under the control of guardians across the state; and
- Information related to wards.<sup>74</sup>

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<sup>68</sup> The Florida Bar, Florida Bar News, *Guardianship Improvement Task Force Inks Its Final Report*, November 16, 2021, available at <https://www.floridabar.org/the-florida-bar-news/guardianship-improvement-task-force-inks-its-final-report/> (last visited January 23, 2022).

<sup>69</sup> Florida Court Clerks and Comptrollers, Guardianship Improvement Task Force, *About the Task Force*, available at <https://www.guardianshipimprovementtaskforce.com/> (last visited January 23, 2022).

<sup>70</sup> *Id.*

<sup>71</sup> Florida Court Clerks and Comptrollers, Guardianship Improvement Task Force, *Final Report*, January 2022, available at <https://guardianshippf.wpengine.com/wp-content/uploads/2022/01/GITFReport-Jan2022.pdf> (last visited January 23, 2022) (hereinafter, “The Final Report”).

<sup>72</sup> *Id.* at pp. 19-23.

<sup>73</sup> *Id.* at p. 29.

<sup>74</sup> *Id.*

According to the report, one topic of concern identified was the potential failure by the courts, clerks of court, and/or court monitors to report situations of abuse, neglect, or exploitation to Florida's Central Abuse Hotline.<sup>75</sup> Without any formalized method for data collection by the courts in each guardianship case, the Task Force concluded that there is no way to determine whether the courts, clerks, and court monitors are complying with their mandatory reporting obligations provided under s. 415.1034, F.S.<sup>76</sup>

Ultimately, the Task Force made the following four recommendations in the area of data transparency:

- Create a statewide data collection system for all guardianship cases;
- Require that every judicial circuit collect and report information in all guardianship cases regarding the existence of advance directives, powers of attorney, health care surrogate designations, and other similar legal documents, whether the document was honored (in part or total), and any reason given by the court for not honoring the document;
- Require that every judicial circuit collect and report guardianship case information and changes to the Office of Public and Professional Guardians (OPPG); and
- Require that OPPG promptly notify the chief judge in any judicial circuit in which a professional guardian is currently serving and/or has previously served as a guardian in a case of any verified findings of misconduct, disciplinary records, or removal of the guardian for cause by any other court.<sup>77</sup>

The report also noted that exactly how widespread and extensive such abuses by guardians may be remains is unknown, due in part to a lack of available data.<sup>78</sup> Relevant questions regarding the demographics of Florida's professional guardians include:

- How many professional guardians in Florida are also public guardians?
- How many professional guardians in Florida maintain dual (state or federal) licenses, such as attorneys barred to practice in Florida?
- How many professional guardians also serve as representative payees in non-guardianship cases?
- How many professional guardians in Florida take on pro bono cases?
- How many professional guardians are compensated by hospitals, assisted living facilities, or other health or residential care providers to serve as a guardian in specific cases?

To address these issues, the Task Force recommended the creation of a publicly accessible, online database regarding the registration, qualifications, and disciplinary/removal history for all professional guardians.<sup>79</sup>

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<sup>75</sup> *Id.* at p. 30.

<sup>76</sup> Section 415.1034, F.S., provides that any person who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited must immediately report such knowledge or suspicion to the central abuse hotline.

<sup>77</sup> The Final Report at p. 29-38.

<sup>78</sup> *Id.* at p. 85.

<sup>79</sup> *Id.* at p. 84.

## Public Records and Exemptions

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>80</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>81</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>82</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>83</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>84</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>85</sup>

### III. Effect of Proposed Changes:

#### Guardianship Data Collection and Transparency

The bill creates s. 744.20042, F.S., providing for guardianship data collection and transparency. Specifically, the bill requires the DOEA to collect, compile, maintain, and manage data submitted to the DOEA under the act. Further, the bill requires each clerk of the court and the DOEA to collect and report certain data by a specified date, specifies the data to be collected, requires the data to be publicly available, and provides for the confidentiality of certain data. Each of these provisions is discussed more below.

#### *Legislative Findings and Intent*

The bill provides legislative findings and intent, specifically that the Legislature intends to create a model of uniform data collection related to guardianship cases throughout Florida by requiring local clerks of the court to report complete, accurate, timely, and publicly available data. The bill provides that the Legislature finds it is an important state interest to implement a uniform data collection process and promote transparency in guardianship matters statewide.

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<sup>80</sup> Section 119.07(1)(a), F.S.

<sup>81</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>82</sup> FLA. CONST. art. I, s. 24(c).

<sup>83</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>84</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>85</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

### *Clerks of Court Data*

Beginning July 1, 2022, the bill requires clerks of court to collect, compile, maintain, and manage data on guardianship cases open on or after that date. Clerks must submit the data to the DOEA each month for every guardianship case in a circuit court.

For each guardianship case that is active in a county, or was active in a county prior to being closed, the bill requires clerks of the court for each county throughout Florida to gather and submit all of the following data points:

- Type of guardianship case, including whether it is a guardianship over:
  - A minor with a developmental disability.<sup>86</sup>
  - An adult with a developmental disability.
  - A minor which is unrelated to a developmental disability.
  - An elderly person who has been deemed incapacitated by a court.
  - A veteran pursuant to part VIII<sup>87</sup> of ch. 744, F.S.
- The current case status, including whether the case is open or pending or has been disposed of or closed.
- Information related to the participants of the guardianship case, including:
  - For the ward:
    - Identifying information, including date of birth, race, ethnicity, and gender.
    - Zip code of the last known mailing address.
    - Marital status.
    - Residential status, including whether he or she resides in:
      - A home owned by the ward.
      - A home of a family member or friend, which is defined in the bill to include a spouse, former spouse, non-cohabitating partner, person related by blood or marriage, person who is presently residing with the ward as if a family or who resided together in the past as if a family, and person who has a child in common with the ward regardless of whether they have been married or have resided together at any time.
      - A community residential home licensed under ch. 419, F.S.
      - An assisted living facility licensed under ch. 429, F.S.
      - A nursing home or related health care facility licensed under ch. 400, F.S.
      - A correctional facility or institution governed by ch. 944, F.S.
      - A juvenile detention or residential commitment facility governed by ch. 985, F.S.
    - Whether the ward has been found to be indigent under s. 27.52, F.S.,<sup>88</sup> including specifically if such determination was made at the time the petition was alleged or at any time during the proceedings.
    - The date of the ward's death, if applicable.
  - For the guardian:

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<sup>86</sup> “Developmental disability” means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. Section 393.063(12), F.S.

<sup>87</sup> Part VIII of ch. 744, F.S., applies to veterans and others receiving benefits from the U.S. Department of Veteran Affairs.

<sup>88</sup> Section 27.52, F.S. provides criteria for indigency status used to determine a person's eligibility for appointment of a public defender.

- The name of the guardian.
- The zip code of the last mailing address of the guardian.
- The relationship status of the guardian to the ward, including whether he or she is:
  - A nonprofessional.
  - A state registered professional guardian.
  - A public guardian.
  - An attorney.
- Whether the guardian is the representative payee for the ward.
- The type of guardian serving the guardianship case, including whether he or she is:
  - A guardian advocate.
  - A voluntary guardian.
  - An emergency temporary guardian.
- The number of cases in the county in which the guardian currently represents a ward.
- The number of cases from which the guardian has been removed for cause in a judicial circuit, if applicable.
- Whether the guardianship is over the person but not the property.
- Information related to the attorneys representing any participant of the case, including:
  - Name of attorney and his or her bar number.
  - Whether the attorney has withdrawn from representation of the specified participant.
- Information related to court dates and motions, including:
  - The date of any court appearance and the type of proceedings scheduled for each date reported.
  - Each scheduled trial date, if applicable.
  - Dismissal date and each hearing date, if applicable.
  - The type of the initial pleading and date such pleading was filed, including a petition:
    - Alleging an incapacitated person.
    - For emergency temporary guardianship.
    - To appoint a successor guardian.
    - For limited guardianship.
    - Not otherwise specified above.
  - The party filing the initial pleading, including whether the petitioner is:
    - A family member or friend.
    - A professional guardian.
    - A public guardian.
    - An attorney.
    - The Department of Children and Families.
    - A hospital licensed under ch. 395, F.S.
    - Any other person not specified in this sub-subparagraph.
  - The reason stated in the pleading to support the petition for guardianship, including:
    - Medical condition.
    - Financial exploitation.<sup>89</sup>
    - Other exploitation.<sup>90</sup>
    - Disability.

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<sup>89</sup> See s. 415.102(8)(a)-(b), F.S.

<sup>90</sup> *Id.*

- Abuse.<sup>91</sup>
- Neglect or abandonment.<sup>92</sup>
- Substance abuse.<sup>93</sup>
- Any other reason not specified above.
- Information related to the hearing and order of incapacity, including:
  - The date of the hearing.
  - The date of the order appointing a guardian, if applicable.
  - Whether the order is for limited or plenary guardianship.
- Information related to court monitoring, including:
  - Whether trust assets exist.
  - Whether the guardian appointed has completed his or her initial and continuing education requirements.
  - Whether a credit history investigation pursuant to s. 744.3135, F.S., has been completed or waived, if applicable.
  - Whether a level 2 background screening pursuant to s. 744.3135, F.S., has been completed or waived, if applicable.
- Information related to the reason for closure or disposition of the case, including:
  - Restoration of rights of the ward.
  - The ward reaching the age of majority.
  - The death of the ward.
  - Transfer of the case to another jurisdiction.
  - Expiration of the emergency temporary guardianship order.
  - Dismissal of the case, including:
    - A less restrictive alternative implemented; or
    - Other reason.
- Information related to the examining committee assigned to the underlying incapacity hearing for each case, including:
  - The name of each expert witness serving on the examining committee.
  - The number of guardianship cases each expert witness on the examining committee has worked on in the past 10 years.
  - The number of guardianship cases in which each expert witness on the examining committee has recommended the appointment of a guardian.

### ***Department of Elder Affairs Data***

For all registered professional guardians, and for any guardian identified in reports submitted by a clerk of court, the bill directs the DOEA to collect all of the following data points:

- Legal name and registration number of the guardian.
- Eligibility status to serve as a professional guardian.
- Mailing and e-mail address of the guardian.
- Counties where the guardian is appointed to open guardianship cases.
- Year in which the guardian was first registered.

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<sup>91</sup> See s. 415.102(1), F.S.

<sup>92</sup> See s. 415.102(16), F.S.

<sup>93</sup> See s. 397.311(47), F.S.

- Agency or firm where the guardian is employed, if applicable.
- Statewide investigation alliance-substantiated allegations, if applicable.
- Ten-year disciplinary history, if applicable.
- Number of cases where the guardian has been removed from the case for cause, if applicable.
- Number of cases in each judicial circuit where the guardian has been removed from a case for cause, if applicable.

### ***Data Publishing***

The bill directs the DOEA to publish all datasets in its possession in a modern, open, electronic format which is machine-readable and publicly available on the agency's website. The DOEA must subsequently publish all data in its possession in the same format, including data received from clerks of court, beginning March 1, 2023, and monthly thereafter. The bill prohibits the DOEA from publishing, at any time, any data exempt from the public records disclosure requirements of s. 119.071, F.S.

The data published on the DOEA website must be searchable, at a minimum, by:

- Data elements;
- County; and
- Circuit.

### ***Confidentiality Requirements***

The bill provides that any information which, pursuant to s. 119.071, F.S., is exempt from public records disclosure requirements when held by a reporting agency retains that exempt status after being submitted to the DOEA. The DOEA is only permitted to disclose exempt information collected if the agency submitting the information grants written permission to do so. This will allow the DOEA to publish data collected on its website without including information that is otherwise exempt from statutory disclosure requirements.

### ***Guardianship Dashboard***

The bill creates s. 744.20043, F.S., requiring the DOEA to create and maintain a publicly available dashboard containing the data collected under the bill. The data must be searchable by:

- Individual data points; and
- Percentage of data reported for each data point.

The dashboard is intended to promote transparency and accountability while protecting a ward's right to privacy.

### ***Conforming Provisions***

The bill amends s. 744.2001, F.S., authorizing the DOEA to utilize financial audits prepared by the clerk of the court as part of a statutorily required monitoring tool for professional guardians, if:

- The tool is primarily used by the clerk of the court for auditing and reviewing purposes; and
- The DOEA collects the data derived by the tool for use as part of the agency's data collection requirements of the bill.

The bill amends ss. 744.362, 744.363, 744.365, and 744.367, F.S., requiring guardians to submit information to the clerk of court in conjunction with the following items for each guardianship case:

- Initial guardianship report;
- Initial guardianship plan;
- Verified inventory; and
- Annual guardianship report.

The information must be submitted in an electronic format developed and approved by the DOEA.

The bill also requires the DOEA to develop a tool to collect data utilizing the clerks of court in conjunction with a guardian's duties to submit each of the four items listed above and with the clerk of court's duty to review each item.

The bill is effective July 1, 2022.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill requires clerks of court to gather and submit data to the OPPG, which will likely result in an unknown cost to counties throughout the state as a result of increased workload. To the extent that the bill results in increased workload, the bill may conflict with the provisions of Article VII, Section 18 of the Florida Constitution by requiring counties to expend funds.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **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 DOEA will need to create and maintain a database and real-time dashboard on its website containing the information collected. The clerks of court will also incur costs in gathering and transmitting data to the DOEA, and in developing a format for guardians to submit information from initial and annual reports, verified inventories, and initial plans. The impact of these costs are indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 744.2001, 744.362, 744.363, 744.365, and 744.367 of the Florida Statutes.

This bill creates sections 744.20042 and 744.20043 of the Florida Statutes.

**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.