

**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: CS/CS/SB 226

INTRODUCER: Children, Families, and Elder Affairs Committee, Judiciary Committee and Senator Berman

SUBJECT: Support for Dependent Adult Children

DATE: March 7, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 226 specifies procedures for effectuating the common law duty of parents to support a dependent adult child. In this context, a dependent adult child is an adult who is dependent on others for care or support because of a mental or physical incapacity that began before the age of 18. This duty of support is detailed in court opinions and is recognized in the Florida Statutes, but the procedures for a dependent adult child to obtain support are not clear.

This bill specifies that a suit to establish support may be initiated at any time by the dependent adult child, the child's parent, or another person, including an agent under the adult child's durable power of attorney, or the adult child's guardian or guardian advocate. In determining the amount of support, the court must consider the adult child's income and assets, existing and future needs, support provided by a parent, the financial resources of each parent, and the availability of other resources and programs to support the adult child. The court may order that support payments be made to the adult child, the adult child's guardian advocate, guardian, or agent under a durable power of attorney or a special needs or pooled trust.

The bill takes effect July 1, 2023.

## II. Present Situation:

### Support for Dependent Adult Children

Generally, the obligation of a parent to support a child ceases when the child reaches majority, but an exception arises when the child is, from physical or mental deficiencies, unable to support himself or herself.<sup>1</sup> State common law imposes a duty of support upon parents for a dependent adult child who is unable to support himself or herself because of a mental or physical incapacity that began prior to the child reaching majority.<sup>2</sup> This duty of support rests upon both parents throughout the dependency and throughout their lives.<sup>3</sup>

In 1973, the Legislature adopted s. 743.07, F.S., removing the disability of nonage, while preserving an exception for continued support of a certain class of dependent adults.<sup>4</sup> In its present form, the statute provides as follows (emphases added):

743.07 Rights, privileges, and obligations of persons 18 years of age or older.—

(1) The disability of nonage is hereby removed for all persons in this state who are 18 years of age or older, and they shall enjoy and suffer the rights, privileges, and obligations of all persons 21 years of age or older except as otherwise excluded by the State Constitution immediately preceding the effective date of this section and except as otherwise provided in the Beverage Law.

(2) *This section shall not prohibit any court of competent jurisdiction from requiring support for a dependent person beyond the age of 18 years when such dependency is because of a mental or physical incapacity which began prior to such person reaching majority or if the person is dependent in fact, is between the ages of 18 and 19, and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19.*

(3) This section shall operate prospectively and not retrospectively, and shall not affect the rights and obligations existing prior to July 1, 1973.

The statute preserves a common law right to seek adult dependent support from a parent in a court of competent jurisdiction, if the dependency was the result of a mental or physical incapacity that began prior to the person reaching majority.<sup>5</sup> The circuit court is the proper court for such adjudications.<sup>6</sup> The right to support, and the corresponding right to bring the cause of action, belongs to the mentally or physically disabled adult whose disability began prior to

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<sup>1</sup> *Perla v. Perla*, 58 So. 2d 689, 690 (Fla. 1952).

<sup>2</sup> *Brown v. Brown*, 714 So. 2d 475, 477 (Fla. 5th DCA 1998); *Monitzer v. Monitzer*, 600 So. 2d 575, 575 (Fla. 2d DCA 1992); *Fincham v. Levin*, 155 So. 2d 883, 884 (Fla. 1st DCA 1963).

<sup>3</sup> *Fernandez v. Fernandez*, 306 So. 3d 1013, 1015 (Fla. 3d DCA 2020) (quoting *Hastings v. Hastings*, 841 So. 2d 484, 486 (Fla. 3d DCA 2003) (internal citations omitted)).

<sup>4</sup> *Fernandez*, 306 So. 3d at 1015.

<sup>5</sup> *Fernandez*, 306 So. 3d at 1016-17.

<sup>6</sup> *Fernandez*, 306 So. 3d at 1015.

majority,<sup>7</sup> although the child does not need to be adjudicated dependent before he or she reaches majority for the court to order extended support.<sup>8</sup>

In cases where the parents of a dependent adult child have dissolved their marriage, and one party has fulfilled his or her child support obligations through the age of majority as provided in the final judgment of dissolution, an independent action may nevertheless be brought to adjudicate that party's continuing support obligation for the dependent adult child.<sup>9</sup>

Aside from the above-described statute that recognizes the existence of a common law right to seek support for dependent persons, state statutes do not otherwise recognize or regulate any right to support for dependent adult children.

## **Kinds of Financial Support Available to Adult Dependent Children**

### ***Government Benefits***

There are many government benefits available to individuals with special needs, and they vary significantly from state to state. Some of the major programs are:<sup>10</sup>

- *Medicaid*. Medicaid provides basic medical care to low-income individuals. Most states also have “waiver” Medicaid programs covering residential, day care, career, and other services.
- *Supplemental Security Income (SSI)*. SSI provides funds for food and shelter to individuals with disabilities. To qualify, a person must have less than \$2,000 in “countable assets.”
- *Social Security Disability Insurance (SSDI)*. SSDI requires that participants have been unable to work for at least a year due to their disability. Benefits are based on the individual's income history and the number of quarters they have worked and contributed to the program.
- *Disabled Adult Child (DAC)*. DAC requires a determination that the onset of the participant's disability occurred before age 22, that the person is unmarried, and that the participant has a parent who has a disability, is retired or deceased and who qualifies for Social Security himself or herself.
- *Supplemental Nutrition Assistance Program (SNAP/Food Stamps)*. SNAP has eligibility guidelines similar to SSI.
- *Section 8 Housing*. Section 8 Housing subsidizes residential rents for families for low-income families, which may include those with special needs. Eligibility is based on a sliding scale that considers income and family size.<sup>11</sup>

### ***Special Needs Trusts***

A special needs trust, sometimes called a supplemental needs trust, is a legal vehicle enabling assets to be held on behalf of someone with disabilities without affecting their eligibility for

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<sup>7</sup> *Id.*

<sup>8</sup> *Skelly v. Skelly*, 300 So. 3d 342, 345 (Fla. 5th DCA 2020) (confirming that s. 743.07(2), F.S., does not require that a child be adjudicated dependent before he or she reaches majority for the trial court to order extended support).

<sup>9</sup> *Fernandez*, 306 So. 3d at 1015.

<sup>10</sup> Special Needs Alliance, *Government Benefits*, available at <https://www.specialneedsalliance.org/special-needs-101/government-benefits/> (last visited Feb. 27, 2023).

<sup>11</sup> *Id.*

means-tested public benefits such as Medicaid or Supplemental Security Income.<sup>12</sup> Put another way, the essential purpose of a special needs trust is usually to improve the quality of an individual's life without disqualifying him or her from eligibility for public benefits.<sup>13</sup>

Special needs trusts are meant to supplement the funds and services available through government programs.<sup>14</sup> While assets held by the trust are not “countable” for the purpose of qualifying for such programs, there are strict regulations regarding disbursements.<sup>15</sup> To create a valid special needs trust, the trust must be established in a way that complies with the Federal law authorizing them.<sup>16</sup> Specifically, a special needs trust must:

- Contain the assets of an individual under age 65;
- Be established for an individual who has a disability that makes him or her substantially unable to work;<sup>17</sup>
- Be established for the benefit of the individual;
- Be established by the individual's parent, grandparent, legal guardian, or a court; and
- Reimburse the state for all of the medical assistance paid on behalf of the individual from any remaining assets upon the individual's death.<sup>18</sup>

Special needs trusts can be either “first party” or “third party” trusts.<sup>19</sup> A first-party special needs trust is created with assets belonging to an individual with disabilities, who becomes the “beneficiary.” The funds typically consist of a personal injury settlement or an inheritance. The person must be under 65 at the time that the trust is established. Funds remaining in the trust at the beneficiary's death must be used to reimburse Medicaid for services to that individual before they can be distributed to anyone else.<sup>20</sup>

A third-party special needs trust is created with assets provided by anyone other than the beneficiary, such as parents, other relatives, or friends of the beneficiary.<sup>21</sup> The trust can be created and funded during the life of the originator (“inter vivos”) or as part of a last will and testament (“testamentary”). Upon the beneficiary's death, there is no requirement to use residual funds to reimburse Medicaid for services provided to the individual, and “remainder” beneficiaries may be named to receive those assets.<sup>22</sup>

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<sup>12</sup> Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements*, available at <https://www.specialneedsalliance.org/> (last visited Feb. 27, 2023).

<https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/> (last visited Feb. 27, 2023).

<sup>13</sup> Special Needs Alliance, *Administering a Special Needs Trust: A Handbook for Trustees* (2022 Ed.), at p. 4, available at <https://www.specialneedsalliance.org/wp-content/uploads/2022/01/2022-SNA-Handbook.pdf>. (last visited Feb. 27, 2023)

<sup>14</sup> Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements*, available at <https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/> (last visited Feb. 27, 2023).

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

<sup>16</sup> 42 U.S.C. s. 1396p(d)(4).

<sup>17</sup> See 42 U.S.C. s. 1382c(a)(3) (providing full details of what constitutes a disability).

<sup>18</sup> *Id.*

<sup>19</sup> Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements*, available at <https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/> (last visited Feb. 27, 2023).

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

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

### ***Pooled Trusts***

A pooled trust is often a practical alternative for small estates or where it is difficult to identify a person who will agree to serve as trustee. Sub-accounts belonging to many beneficiaries are managed as a single entity, usually by nonprofit corporations, which call upon the experience of social workers, money managers, and attorneys specializing in special needs cases. Because many financial institutions do not handle small special needs trusts, or charge fees that are not cost-effective for modest trusts, pooled trusts can give families access to highly skilled trustees. Funds remaining at the beneficiary's death are typically divided between Medicaid and the nonprofit entity.<sup>23</sup>

Similar to special needs trusts, pooled trusts must be established in a way that complies with the Federal law authorizing them.<sup>24</sup> Specifically, a pooled trust must:

- Contain the assets of an individual of any age who has a disability that makes him or her substantially unable to work;<sup>25</sup>
- Be established for the benefit of the individual;
- Be established and managed by a nonprofit association;
- Maintain a separate account for each beneficiary but pool the funds for investment and management purposes;
- Be established by the parent, grandparent, or legal guardian of the individual, by the individual, or by a court; and
- Reimburse the state for all of the medical assistance paid on behalf of the individual from any remaining assets upon the individual's death to the extent the funds are not retained by the trust.<sup>26</sup>

### ***Child Support***

In dissolution of marriage proceedings, the court may at any time order a parent to pay support to the other parent or to a third party who has custody.<sup>27</sup> The amount of child support is based on statutory child support guidelines.<sup>28</sup> These guidelines are intended to ensure support amounts are fair.<sup>29</sup>

Child support guidelines are used the first time child support is ordered and every time the child support amount changes. They are also used to review the order to see if the support amount should be changed. Child support guidelines consider:

- The income of both parents;
- The child's health care and child care costs; and

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<sup>23</sup> *Id.*

<sup>24</sup> 42 U.S.C. s. 1396p(d)(4)(C).

<sup>25</sup> 42 U.S.C. s. 1382c(a)(3).

<sup>26</sup> *Id.*

<sup>27</sup> Section 61.13(1)(a)1.a., F.S.

<sup>28</sup> Fla. Dep't of Rev., *Child Support Amounts*, available at [https://floridarevenue.com/childsupport/child\\_support\\_amounts/Pages/child\\_support\\_amounts.aspx](https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx) (last visited Feb. 27, 2023); *see also* s. 61.30, F.S. (providing the child support guidelines).

<sup>29</sup> Fla. Dep't of Rev., *Child Support Amounts*, available at [https://floridarevenue.com/childsupport/child\\_support\\_amounts/Pages/child\\_support\\_amounts.aspx](https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx) (last visited Feb. 27, 2023).

- The standard needs for the child.<sup>30</sup>

A table of support amounts based on the child's age and net income of the parents is provided in statute.<sup>31</sup>

The court or agency establishing support must use the guidelines to decide the amount of child support that will go in the support order.<sup>32</sup> In special circumstances, support amounts can be higher or lower than the guideline amounts. For example, a judge may consider a child's high medical expenses as a reason to change the support amount. In most cases, judges have to give written reasons why support amounts are different from the guideline amounts.<sup>33</sup>

All child support orders and income deduction orders entered on or after October 1, 2010, must provide, among other things, for child support to terminate on a child's 18<sup>th</sup> birthday, unless the court finds or has previously found that child support should continue:

for a dependent person beyond the age of 18 years when such dependency is because of a mental or physical incapacity which began prior to such person reaching majority or if the person is dependent in fact, is between the ages of 18 and 19, and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19.<sup>34</sup>

Additionally, a court that initially enters an order requiring a parent to make child support payments has continuing jurisdiction after entry of the initial order to modify the amount and terms and conditions of the child support payments if:

- The modification is found by the court to be in the best interests of the child;
- There is a substantial change in the circumstances of the parties;
- The child support payments are for an adult child who is dependent due to a mental or physical incapacity that began before age 18;
- The child support payments are for a child who is between the ages of 18 and 19 and is reasonably expected to graduate before age 19; or
- The child is emancipated, marries, joins the armed services, or dies.<sup>35</sup>

## **Guardianship**

If a court finds that a person does not have the ability to safely manage the things that belong to him or her, or the ability to meet his or her basic health, safety, and self-care needs, the court will

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<sup>30</sup> Fla. Dep't of Rev., *Child Support Amounts*, available at [https://floridarevenue.com/childsupport/child\\_support\\_amounts/Pages/child\\_support\\_amounts.aspx](https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx) (last visited Feb. 27, 2023); *see also* s. 61.30, F.S. (providing the child support guidelines).

<sup>31</sup> *Id.*

<sup>32</sup> Fla. Dep't of Rev., *Child Support Amounts*, available at [https://floridarevenue.com/childsupport/child\\_support\\_amounts/Pages/child\\_support\\_amounts.aspx](https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx) (last visited Feb. 27, 2023).

<sup>33</sup> *Id.*

<sup>34</sup> Section 743.07(2), F.S.

<sup>35</sup> Section 61.13(1)(a)2., F.S.

rule that this person is incapacitated.<sup>36</sup> In many cases, after a court decides that a person is incapacitated, it will choose someone else to make some or all the decisions for the incapacitated person. This is called a guardianship.<sup>37</sup>

Being placed in a guardianship results in the loss of an individual's right to make his or her own life choices. The rights that a person can lose include the right to contract, vote, travel, marry, work, consent to treatment, sue or defend lawsuits, choose living arrangements, make decisions about their social life, have a driver's license, personally apply for benefits, and manage money or property.<sup>38</sup>

Guardianships must be specific to the abilities and needs of the individual and should not be any more restrictive than necessary.<sup>39</sup> Consequently, there are different types of guardianships under state law. They include:<sup>40</sup>

- Preneed guardian;<sup>41</sup>
- Voluntary guardianship;<sup>42</sup>
- Emergency temporary guardianship;<sup>43</sup>
- Limited guardianship;<sup>44</sup>
- Guardian advocate for individuals who have a developmental disability;<sup>45</sup>
- Guardian advocate for individuals receiving mental health treatment;<sup>46</sup> and
- Full (*i.e.* plenary) guardianship.<sup>47</sup>

The powers and duties of a court-appointed guardian include, but are not limited to:

- Filing an initial plan and annual reports;<sup>48</sup>
- Making provision for the medical, mental, rehabilitative, and personal care of the person;<sup>49</sup>
- Making residential decisions on behalf of the person;<sup>50</sup>
- Advocating on behalf of the person in institutional and other residential settings;<sup>51</sup> and
- Making financial decisions on behalf of the person.<sup>52</sup>

<sup>36</sup> See generally Part V, Ch. 744, F.S.; see also Disability Rights Florida, *What is Guardianship?*, available at [https://disabilityrightsflorida.org/disability-topics/disability\\_topic\\_info/what\\_is\\_guardianship](https://disabilityrightsflorida.org/disability-topics/disability_topic_info/what_is_guardianship) (last visited Feb. 27, 2023).

<sup>37</sup> See *id.*

<sup>38</sup> See 744.1012(1), F.S.; see also Disability Rights Florida, *Types of Guardianship*, available at [https://disabilityrightsflorida.org/disability-topics/disability\\_topic\\_info/types\\_of\\_guardianship](https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship) (last visited Feb. 27, 2023).

<sup>39</sup> Section 744.1012(2), F.S.; see also Disability Rights Florida, *Types of Guardianship*, available at [https://disabilityrightsflorida.org/disability-topics/disability\\_topic\\_info/types\\_of\\_guardianship](https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship) (last visited Feb. 27, 2023).

<sup>40</sup> See generally Disability Rights Florida, *Types of Guardianship*, available at [https://disabilityrightsflorida.org/disability-topics/disability\\_topic\\_info/types\\_of\\_guardianship](https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship) (last visited Feb. 27, 2023).

<sup>41</sup> Sections 744.3045 and 744.3046, F.S.

<sup>42</sup> Section 744.341, F.S.

<sup>43</sup> Section 744.3031, F.S.

<sup>44</sup> Section 744.441(1), F.S.; see also s. 744.102(9)(a), F.S. (defining "limited guardian").

<sup>45</sup> Sections 744.3085 and 393.12, F.S.

<sup>46</sup> Sections 744.3085 and 394.4598, F.S.

<sup>47</sup> Section 744.441(1), F.S.; see also s. 744.102(9)(b), F.S. (defining "plenary guardian").

<sup>48</sup> Section 744.361(6)-(7), F.S.

<sup>49</sup> Section 744.361(13)(f), F.S.

<sup>50</sup> Section 744.361(13)(h), F.S.

<sup>51</sup> Section 744.361(13)(i), F.S.

<sup>52</sup> Section 744.361(12), F.S.

Any resident of the state who is 18 years old and of sound mind is qualified to act as a guardian.<sup>53</sup> Additionally, a non-resident may serve if he or she is related to the person with a developmental disability by blood, adoption, or law.<sup>54</sup> Certain individuals, however, cannot be appointed to act as a guardian.<sup>55</sup>

Guardians must file an initial guardianship report with the court within 60 days after appointment.<sup>56</sup> The initial guardianship report must consist of an initial guardianship plan,<sup>57</sup> which must include certain specified information for the person for whom the guardianship is being established. For example, the initial guardianship plan must include information regarding the provision of medical, mental, or personal care services for the welfare of the person, as well as the place and kind of residential setting best suited for the needs of the person.<sup>58</sup>

Guardians must also file an annual guardianship report with the court.<sup>59</sup> The annual guardianship report must be filed within 90 days after the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. The annual guardianship report must include an annual guardianship plan<sup>60</sup> containing information regarding the residence of the person for whom the guardianship has been established; the medical and mental health conditions, treatment, and rehabilitation needs of the person; the social condition of the person; and a list of any preexisting orders not to resuscitate, or preexisting advance directives.<sup>61</sup>

### ***Guardian Advocates***

A “guardian advocate” is a person appointed by a written order of the court to represent a person with developmental disabilities.<sup>62</sup> A “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.<sup>63</sup>

Guardian advocacy is a circuit court process for family members, caregivers, or friends of individuals with a developmental disability to obtain the legal authority to act on their behalf if the person lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property, or if the person has voluntarily petitioned for the appointment of a guardian advocate.<sup>64</sup>

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<sup>53</sup> Section 744.309(1), F.S.

<sup>54</sup> Section 744.309(2), F.S.

<sup>55</sup> See generally ss. 744.309(3), (6), F.S.

<sup>56</sup> Sections 744.361(6) and 744.362(1), F.S.

<sup>57</sup> Section 744.362(1), F.S.

<sup>58</sup> See s. 744.363(1)(a)-(f), F.S.

<sup>59</sup> Section 744.367(1), F.S.

<sup>60</sup> Section 744.367(3)(a), F.S.

<sup>61</sup> Section 744.3675, F.S.

<sup>62</sup> Sections 393.063(21) and 393.12, F.S.

<sup>63</sup> Section 393.063(12), F.S.

<sup>64</sup> See s. 393.12(2)(a), F.S.; see also Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 1, available at [https://flcourts18.org/docs/sem/Florida\\_Guardian\\_Advocacy\\_Law\\_and\\_information\\_Guide.pdf](https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf). (last visited Feb. 27, 2023)



State law recognizes the appointment of a guardian advocate as a less restrictive alternative to guardianship.<sup>65</sup> A guardian advocate can be appointed without having to declare the person with a developmental disability incapacitated.<sup>66</sup> The process of becoming a guardian advocate of a person with a developmental disability does not require the hiring of an attorney, although during the proceedings the court will appoint an attorney for the person with the developmental disability to ensure that his or her best interests are protected.<sup>67</sup>

If the person lacks the capacity to make any decisions about his or her care, it may be more appropriate for the court to appoint a plenary guardian who is authorized to act on the person's behalf in all matters. The process of appointing a plenary guardian requires the court to determine that the person is incapacitated, and the person petitioning to become a plenary guardian must have an attorney.<sup>68</sup>

A guardian advocate for a person with a developmental disability has the same powers, duties, and responsibilities required of a guardian under the guardianship statute or as defined by court order issued under the statute governing the appointment of guardian advocates.<sup>69</sup>

The qualifications to serve as a guardian advocate are the same as those required of any guardian under the guardianship statute.<sup>70</sup> The court will also consider the wishes expressed by a developmentally disabled person as to whom will be appointed as his or her guardian advocate.<sup>71</sup> A guardian advocate need not be the caregiver of the person with a disability.<sup>72</sup>

### III. Effect of Proposed Changes:

The common law and statutes of this state recognize that a parent has a duty to support a dependent adult child who has a mental or physical incapacity that began before the age of 18. Under current law, a dependent adult child may pursue support from a parent in court, but the procedures for doing so, proof required to obtain support, and standards governing awards are not clear. This bill clarifies those matters by creating or amending statutes relating to the

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<sup>65</sup> Section 744.3085, F.S.

<sup>66</sup> Section 393.12(2)(a), F.S.

<sup>67</sup> Section 393.12(2)(b), F.S.; *see also* Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 2, available at [https://flcourts18.org/docs/sem/Florida\\_Guardian\\_Advocacy\\_Law\\_and\\_information\\_Guide.pdf](https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf). (last visited Feb. 27, 2023)

<sup>68</sup> Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 1, available at [https://flcourts18.org/docs/sem/Florida\\_Guardian\\_Advocacy\\_Law\\_and\\_information\\_Guide.pdf](https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf). (last visited Feb. 27, 2023)

<sup>69</sup> Section 393.12(10), F.S.

<sup>70</sup> Fifth Judicial Circuit, Lake County, Florida, *Florida Law and Guardian Advocacy: A Guide for Families and Friends of Developmentally Disabled Individuals* (Oct. 2014), at 2, available at <https://www.lakecountyclerk.org/forms/Guardianship/DavisGuardianAdvocacyManual.pdf> (last visited Feb. 27, 2023)

<sup>71</sup> *Id.*

<sup>72</sup> Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 2, available at [https://flcourts18.org/docs/sem/Florida\\_Guardian\\_Advocacy\\_Law\\_and\\_information\\_Guide.pdf](https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf). (last visited Feb. 27, 2023)

dissolution of marriage, support and time-sharing;<sup>73</sup> developmental disabilities;<sup>74</sup> determination of parentage;<sup>75</sup> and guardianship.<sup>76</sup>

### **Amendments to Dissolution of Marriage, Support, and Time-Sharing Statutes**

Within the statutes governing dissolution of marriage, support, and time-sharing, the bill creates s. 61.1255, F.S., entitled “Support for dependent adult children; powers of court,” to provide for the support of dependent adult children. The bill:

- Provides legislative intent, specifically to state that the Legislature intends to:
  - Codify and clarify existing common law and Florida case law recognizing that the parents of a dependent adult child have an obligation to support that child;
  - Provide procedures for establishing support for a dependent adult child; and
  - Provide safeguards, when establishing court-ordered support for a dependent adult child, to protect and preserve any means-based government benefits the dependent adult child is receiving or may be entitled to receive.
- Defines the term “dependent adult child” to mean an unmarried adult who is incapable of self-support as a result of physical or mental incapacity that began before the person reached the age of 18.
- Requires that any right of a parent or other person to decide where the dependent adult child will live be established in a guardianship proceeding brought under the statutes governing developmental disabilities or guardianship.
- Clarifies that language in the bill may not be construed to require the appointment of a guardian advocate under ch. 393, F.S., or a guardianship under ch. 744, F.S., in order for a court to order support for a dependent adult child.
- Provides that a suit to establish support for a dependent adult child may only be filed by one of the following:
  - The dependent adult child or his or her agent under a durable power of attorney, if the dependent adult child’s right to sue or defend lawsuits has not been removed by the court. Any such action must be brought in the circuit court in the county in which the child resides.
  - A parent or other person on behalf of the dependent adult child. Any such action must be brought under the statutes governing developmental disabilities or guardianship.
  - The dependent adult child’s appointed guardian advocate or appointed guardian, if the dependent adult child’s right to sue or defend lawsuits has been removed by the court.
- Provides that a suit to establish support for a dependent adult child may be filed at any time after he or she reaches the age of 17 years and 6 months, unless such an order is already in place, having been established during the child’s minority.
- Provides that if a court has jurisdiction over the parties because of an issue of child support, the parents may agree in writing to provide for dependent adult support in the existing case if the agreement is submitted to the court for approval before the dependent adult child reaches the age of 18. Otherwise, the amount of support to be paid by one or both parents to the other must be established in a guardianship proceeding or in a separate support proceeding in

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<sup>73</sup> Chapter 61, F.S.

<sup>74</sup> Chapter 393, F.S.

<sup>75</sup> Chapter 742, F.S.

<sup>76</sup> Chapter 744, F.S.

circuit court pursuant to the bill. The bill does not preclude a court from establishing support, ordering continued support, or enforcing or modifying support orders established under the statutes governing dissolution of marriage, support, and time-sharing.

- Provides that support ordered after the dependent adult child reaches the age of 18 may be paid only to the dependent adult child or his or her court-appointed guardian advocate, guardian, or agent under a durable power of attorney. However, the court may irrevocably assign the support to a special needs trust or to a pooled trust under Federal law<sup>77</sup> established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits.
- Prohibits the Department of Revenue from filing a petition to establish, modify, or enforce a support order under the bill.

The bill also creates s. 61.31, F.S., entitled "Amount of support for a dependent adult child," to provide for the amount of support for dependent adult children. In determining the amount of support to be paid after a dependent adult child reaches the age of 18, the specific terms and conditions of such support, and the rights and duties of both parents with respect to support, the court must determine and give consideration to all of the following:

- The dependent adult child's income and assets;
- Any existing and future needs of the dependent adult child which are directly related to his or her mental or physical incapacity and the substantial care and personal supervision directly required by or related to that incapacity;
- Whether a parent or other person pays for or will pay for the care or supervision of the dependent adult child or provides or will provide substantial care or personal supervision to the dependent adult child himself or herself;
- The financial resources available to each parent for the support, care, and supervision of the dependent adult child; and
- Any other financial resources or other resources or programs available for the support, care, and supervision of the dependent adult child.

The bill provides that the court may irrevocably assign the support to a special needs trust or to a pooled trust under Federal law<sup>78</sup> established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits. In making its decisions, the court must take into consideration:

- Any state or federal programs and benefits that the dependent adult child is receiving or may receive due to reaching the age of majority; and
- The effect that the court-ordered support would have on the dependent adult child's eligibility for such programs and benefits.

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<sup>77</sup> See 42 U.S.C. s. 1396p(d)(4) (providing for special needs trusts); *see also* 42 U.S.C. s. 1396p(d)(4)(C) (providing for pooled trusts).

<sup>78</sup> *See id.*

The bill specifies that the court may not order support that will cause ineligibility for programs in which the dependent adult child currently participates, or programs and services they are reasonably expected to become eligible for due to reaching the age of majority.

The bill amends the statute governing child support and parenting<sup>79</sup> by replacing certain statutory cross-references<sup>80</sup> to s. 743.07(2), F.S., with specific language from the cross-referenced statute. The replacement of the cross-references with specific language from the cross-referenced statute is a technical change that does not create new rights or obligations relating to child support. The language inserted from the cross-referenced statute relates to the authority of a court to order child support for a child who is between 18 and 19 and is reasonably expected to graduate high school before age 19.

The bill amends the statute governing child support and guidelines,<sup>81</sup> to provide that the guidelines in that section do not apply to support for a dependent adult child, and that the amount of support for a dependent adult child must be determined with reference to the new statute created by the bill governing the amount of support for a dependent adult child.

The bill amends the statute governing child support guidelines and retroactive child support.<sup>82</sup> The amendment clarifies that the existing child support guidelines apply to a child support order for a child who is dependent in fact and between the ages of 18 and 19 and who is still in high school and is performing in good faith with a reasonable expectation of graduation before he or she reaches the age of 19.

### **Amendments to Developmental Disabilities Statute**

Within the statutes governing developmental disabilities, the bill amends the section governing the capacity and appointment of guardian advocates,<sup>83</sup> to provide that a person who is being considered for appointment or is appointed as a guardian advocate is not required to be represented by an attorney if he or she is delegated the right of a parent to receive periodic payments for the support, care, maintenance, education, or other needs of the person with a developmental disability.

The bill also provides that a petition to appoint a guardian advocate may include a request for periodic payments from either or both parents of the person with a developmental disability for the support, care, maintenance, education, or other needs of that person. The bill also clarifies that no obligation or duty is conferred on a guardian advocate to pursue support for the person with a developmental disability.

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<sup>79</sup> Section 61.13, F.S.

<sup>80</sup> Section 743.07(2), F.S.

<sup>81</sup> Section 61.29, F.S.

<sup>82</sup> Section 61.30, F.S.

<sup>83</sup> Section 393.12, F.S.

### Amendments to Determination of Parentage Statute

Within the statutes governing the determination of parentage, the bill amends the section governing hearings and court orders for support, hospital expenses, and attorney fees,<sup>84</sup> to make conforming changes. The bill also amends the section governing the retention of jurisdiction for future orders,<sup>85</sup> to clarify that modifications of child support and time-sharing must be determined under the statutes governing dissolution of marriage, support, and time-sharing.

### Amendments to Guardianship Statute

Within the statutes governing guardianship, the bill creates s. 744.1013, F.S., entitled “Jurisdiction for support claims,” to provide jurisdiction for dependent adult child-related support claims. The bill provides that the court has jurisdiction over claims for support of a dependent adult child and must adjudicate the financial obligation, including health insurance, of the dependent adult child’s parents and enforce the financial obligation as provided in the statute governing dissolution of marriage, support, and time-sharing. All support required to be paid in relation to a dependent adult child over the age of 18 must be paid to the dependent adult child or his or her court-appointed guardian advocate, guardian, or agent under a durable power of attorney. However, the court may irrevocably assign the support to a special needs trust or to a pooled trust under Federal law<sup>86</sup> established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child’s means-based government benefits. Any order for support entered in a proceeding under the statutes governing guardianship or developmental disabilities supersedes any support order entered under the statute governing the dissolution of marriage, support, and time-sharing.

The bill also creates s. 744.422, F.S., entitled “Petition for child support for a dependent adult child,” to authorize the filing of petitions in court for child support for a dependent adult child. The bill provides that pursuant to the new statute created within the dissolution of marriage, support, and time-sharing statutes providing for the support of dependent adult children, a guardian may petition the court for an order requiring either or both parents to pay periodic amounts for the support, care, maintenance, education, and any other needs of a dependent adult child if not otherwise provided for in the guardianship plan. The amount of support must be determined pursuant to the new statute created within the dissolution of marriage, support, and time-sharing statutes providing for same. The bill also clarifies that no obligation or duty is conferred on a guardian to pursue support for the person with a developmental disability.

The bill amends the statute governing guardians of minors,<sup>87</sup> to include a reference to the dissolution of marriage, support, and time-sharing statute.

The bill takes effect July 1, 2023.

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<sup>84</sup> Section 742.031, F.S.

<sup>85</sup> Section 742.06, F.S.

<sup>86</sup> See 42 U.S.C. s. 1396p(d)(4) (providing for special needs trusts); see also 42 U.S.C. s. 1396p(d)(4)(C) (providing for pooled trusts).

<sup>87</sup> Section 744.3021, 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 identified.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

By providing clear procedures to obtain support for adult dependent children, more suits seeking support will likely be pursued and more support obtained. However, the clear procedures may reduce the time and expense of obtaining awards.

## C. Government Sector Impact:

According to the Office of the State Courts Administrator (OSCA), any additional workload on the courts as a result of the bill will apply only to a small number of cases. Moreover, OSCA reports that it does not have sufficient “data to quantifiably establish the increase in judicial time and workload as a result of additional court filings” that result from the bill.<sup>88</sup>

**VI. Technical Deficiencies:**

None.

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<sup>88</sup> Office of the State Courts Administrator, 2023 Judicial Impact Statement for SB 226 (Feb. 2, 2023).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 61.1255, 61.31, 744.1013, and 744.422.

This bill substantially amends the following sections of the Florida Statutes: 61.13, 61.29, 61.30, 393.12, 742.031, 742.06, and 744.3021.

**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 Children, Families, and Elder Affairs on March 7, 2023:**

The committee substitute:

- Provides legislative intent;
- Removes language stating that the parents of a dependent adult child are responsible for supporting that child.
- Clarifies that the bill does specifically require the appointment of a guardian advocate under ch. 393, F.S., or the filing of a guardianship under ch. 744, F.S., in order for a court to order support for a dependent adult child.
- Removes language stating that a suit to establish support for a dependent adult child may only be filed by the dependent adult child or his or her agent under a durable power of attorney, if the dependent adult child’s right to sue or defend lawsuits has not been removed by the court.
- Requires courts to take certain factors relating to benefit eligibility into consideration when determining the amount of support for a dependent adult child.
- Clarifies that no obligation or duty is conferred on either a guardian or guardian advocate to pursue support for a person with a developmental disability.

**CS by Judiciary on February 7, 2023:**

- Makes technical changes to s. 61.13(1)(a)2., F.S., to clarify that the provided list was intended to establish separate independent bases for which a court is authorized to modify the amount and terms and conditions of child support payments.
- Replaces references to “attorney in fact” with references to “agent under a durable power of attorney,” to ensure consistency within the bill and to use the more common and modern term to refer to a person having authority to act under a power of attorney.

- B. **Amendments:**

None.