

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: SB 1272

INTRODUCER: Senator Jones

SUBJECT: Guardianship

DATE: April 2, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.			CF	
3.			RC	

I. Summary:

SB 1272 amends guardianship statutes to limit a guardian’s authority to restrict a ward’s access to family and friends, ensure that a ward receives notice of a change in his or her residential setting, and identify and notify certain people of events in a ward’s life.

The bill permits a guardian to restrict a minor ward’s contact with someone who may cause harm to the minor. However, the bill prohibits a guardian from restricting an adult ward’s contact with someone who might pose a risk to the ward for longer than a specified time limit unless a court order authorizes the restriction.

A guardian must notify a ward 14 days in advance if the ward is going to be moved to a more restrictive residential setting. This notice is not required if the change is authorized in the guardianship plan or in a court order.

Additionally, a guardian is required to identify and appropriately notify people specified in the initial guardianship plan concerning a ward’s death and burial arrangements. Finally, when an incapacitated ward is transferred to a medical facility, the guardian must notify the specified people and those entitled to visit.

The bill takes effect July 1, 2025.

II. Present Situation:

Guardianship

Background

A guardianship is a legal concept in which a “guardian” is given the legal duty and authority to care for a “ward” or his or her property because the ward is considered incapable of acting for

himself or herself.¹ The ward's incapacity is most often due to infancy, disability, or incapacity. Guardianships are generally involuntary procedures and disfavored by courts because the ward loses his or her individual and civil rights. However, guardianships are necessary to protect the most vulnerable people who do not have the ability to function and protect themselves.

The relationship between a guardian and a ward is a fiduciary relationship, a trust relationship.² A guardian must act in good faith and may not act in a manner that is contrary to the ward's best interests.³

Powers and Duties of a Guardian

Pursuant to the obligations required under the statutes, a guardian must file an initial guardianship *report*, which must include an initial guardianship *plan*, within 60 days after being appointed as a guardian, and must subsequently file an annual guardianship report.⁴

A guardian who is given authority over a ward's "person" must, among other things:

- Consider the expressed wishes of the ward as known by the guardian when making decisions that will affect the ward.
- Allow the ward to maintain contact with family and friends unless the guardian believes the contact has the potential to cause harm to the ward.
- Not restrict the physical liberty of the ward more than is reasonably necessary to protect the ward or another person from serious physical injury, illness, or disease.
- Evaluate the ward's medical and health care options, financial resources, and desires when making residential decisions that best meet the current needs of the ward.⁵

Initial Guardianship Plan

The initial guardianship plan must include:

- The provision of medical, mental, or personal care services for the ward's welfare.
- The provision of social and personal services for the ward's welfare.
- The place and kind of residential setting that best meets the ward's needs.
- The application of insurance and private or governmental benefits that the ward may be entitled to receive.
- Any physical and mental exams needed to determine the ward's treatment needs.
- A list of preexisting orders not to resuscitate and advance directives.
- A description of steps taken to identify and locate a preexisting order not to resuscitate or advance directive.⁶

¹ BLACK'S LAW DICTIONARY, 12th edition, 2024; 28 FLA. JUR 2D GUARDIAN AND WARD s. 1 *Definitions* (2025).

² 28 FLA. JUR 2D GUARDIAN AND WARD s.4 *Trust Relationship Between Guardian and Ward* (2025); s. 744.361(1), F.S.

³ Section 744.361(3) and (4), F.S.

⁴ Section 744.361(6) and (7), F.S.

⁵ Section 744.361(13), F.S.

⁶ Section 744.363(1) and (2), F.S.

Additionally, the guardianship plan may not restrict the ward's physical liberty more than is reasonably necessary to protect the ward or others from serious physical injury, illness, or disease and provide the ward with care and treatment.⁷

Recent Guardianship Events that Attracted National Attention and Legislation

Unfortunately, when parents divorce and a subsequent marriage occurs, families sometimes fracture and children from the first marriage may be denied access to, or information about, their incapacitated parent. This happens when the subsequent spouse is the guardian and has legal custody of the incapacitated parent. In some instances, the guardian spouse has decided not to notify relatives of their family member's death.

The actor Peter Falk developed Alzheimer's disease late in life. His second wife chose to isolate him and prevented his daughter, Catherine Falk, from visiting him. The daughter was forced to initiate court proceedings and spend almost \$100,000 to be able to see her father before he died. Because of this, Catherine Falk has founded an organization⁸ that has initiated legislation around the country which prohibits guardians from preventing contact with family members.⁹ Varying versions of this legislation have been adopted in several states.

Similarly, the radio host Casey Kasem¹⁰ suffered from Lewy Body dementia, a progressive and debilitating brain disorder that affects the nerve cells in the brain.¹¹ Casey Kasem's adult children and second wife were involved in a lengthy legal battle in which the children sought occasional visits with their incapacitated father. One of the adult daughters testified in a legislative hearing in Washington state that the people who loved her father were prevented by his second wife from visiting with him. The daughter has also worked to support legislation that would enable friends and relatives to visit ailing people without getting into protracted legal proceedings.¹²

III. Effect of Proposed Changes:

Section 1 – Powers and Duties of a Guardian (s. 744.361(13), F.S.)

This bill seeks to ensure that friends and family members are not prevented by a guardian from having access to a ward. The bill amends the powers and duties of a guardian that pertain to:

- Allowing a ward to maintain contact with family and friends,

⁷ Section 744.363(4), F.S.

⁸ Catherine Falk Organization, <https://catherinefalkorganization.org/>. The website promotes human rights visitation legislation and states that the organization "seeks to remove barriers to promote strong family relationships, while still providing ample protection if needed."

⁹ CBS News, *Actor Peter Falk's Daughter Pushing For Change in Legal Guardianship Law* (Jan. 27, 2016) <https://www.cbsnews.com/colorado/news/actor-peter-falks-daughter-pushing-for-change-in-legal-guardianship-law/> (last visited March 26, 2025).

¹⁰ CNN, *Casey Kasem and a Lesson About End-of-Life Care* (April 18, 2016), <https://www.cnn.com/2014/06/20/health/casey-kasem-end-of-life-care/index.html>.

¹¹ Mayo Clinic, *Lewy Body Dementia*, <https://www.mayoclinic.org/diseases-conditions/lewy-body-dementia/symptoms-causes/syc-20352025> (last visited March 26, 2025).

¹² THE SEATTLE TIMES, *Daughters of Casey Kasem, Peter Falk Tackle Elder Visitation In Washington State* (Jan. 31, 2016), <https://www.seattletimes.com/seattle-news/daughters-of-casey-kasem-peter-falk-tackle-elder-visitation/>.

- Notifying a ward concerning a change in his or her residential setting, and
- Identifying and notifying anyone identified in a ward's initial guardianship plan of certain events.

A Ward's Ability to Maintain Contact With Family and Friends

Minors

The bill increases and clarifies the responsibilities of a guardian to allow a ward to maintain contact with family and friends. If the ward is a minor, the guardian is authorized to restrict the ward's ability to maintain any contact with someone whom the guardian believes may cause harm to the ward.

Adults

In contrast, the bill provides that if the ward is an adult, the guardian is not authorized to restrict the ward's ability to maintain contact with someone unless the guardian has good cause to believe that the person poses a risk of significant physical, psychological, or financial harm to the ward. Even then the guardian may not restrict the ward's ability to have contact with that person for more than 7 business days if the person has a family or preexisting social relationship with the ward. If there is no family or preexisting social relationship, the guardian may not restrict the ward's access to that person for more than 60 days. If there is a specific court order, the guardian may restrict the ward's access to the person.

Notice to a Ward of a Change in Residential Plans

The guardian has a duty to evaluate a ward's health care options, financial abilities, and desires when making residential plans that are best suited for the ward's current needs. If a guardian is making a change in a ward's residence, the bill requires the guardian to notify the ward of the change at least 14 days before the change occurs if the new residence will be *more restrictive* than the current residence. However, this notice is not required if the change is authorized by the guardianship plan or a court order.

Notifying Anyone Identified in an Initial Guardianship Plan of Certain Events

The bill requires a guardian to provide appropriate notice of certain enumerated events to anyone who is identified in the initial guardianship plan as described below.

Section 2 – Initial Guardianship Plan (s. 744.363(1), F.S.)

The bill adds another item that must be included in the initial guardianship plan that is submitted to a court along with the initial guardianship report. The plan must identify everyone entitled to receive notice of information, when the information is known or can be reasonably ascertained by the guardian of:

- A ward's death.
- How a ward's remains will be disposed.
- Funeral arrangements.
- The final resting place of the decedent.

When a ward is incapacitated and is being transferred to a medical facility, the guardian must notify the people entitled to receive notice of the ward's transfer and alert people who are entitled to visit the ward. However, the identification of the people entitled to visit the ward does not limit the people who are entitled to visit.

The act takes effect July 1, 2025.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By providing greater access to a ward and preventing a guardian from denying access, friends and family members will not likely incur legal expenses in an effort to gain access to a ward. In contrast, a guardian will probably expend more of his or her time identifying and notifying people who are intended to receive notice of changes that occur in a ward's circumstances. Additionally, guardians may need to initiate judicial proceedings to bar individuals from visiting a ward if they pose a risk of causing some form of harm to a ward.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The text that prohibits a guardian from restricting a ward's access to certain people and the accompanying timeframes could be clarified.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 744.361 and 744.363.

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.