

FLORIDA HOUSE OF REPRESENTATIVES

BILL ANALYSIS

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BILL #: [HB 737](#)

TITLE: Persons Disqualified from Being Appointed as a Guardian

SPONSOR(S): Botana

COMPANION BILL: [SB 960](#) (Bradley)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Civil Justice & Claims](#)

16 Y, 0 N

[Human Services](#)

[Judiciary](#)

SUMMARY

Effect of the Bill:

To expand the population eligible to serve as a guardian in Florida, HB 737 creates an exception to the prohibition on an individual with a prior felony conviction from being appointed as a guardian when certain factors are met. Under the bill, an individual who was convicted of certain felony offenses more than ten years prior to his or her potential appointment as a guardian may be eligible to serve as a guardian if:

- The individual is the ward's parent, child, sibling, spouse, grandparent, or grandchild;
- He or she has disclosed the felony conviction to the court for review; and
- After review, the court has determined that he or she has the capacity to serve as a guardian in the best interest of the ward, regardless of the prior conviction.

However, if the felony conviction was for any offense listed under s. 435.04, F.S., the exception is inapplicable and the individual remains barred from being appointed as a guardian. Additionally, the bill provides that an already-appointed guardian may keep his or her role in spite of a felony conviction, if the court determines that the factors cited above have been met.

The bill has an effective date of July 1, 2026.

Fiscal or Economic Impact:

The bill may have a positive economic impact on those wards who likely would have had to hire a private professional guardian due to the prohibition on prior felony convictions preventing a relative from being appointed.

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ANALYSIS

EFFECT OF THE BILL:

HB 737 amends [s. 744.309, F.S.](#), to expand the list of [eligible adults](#) who may be appointed by the court to serve as a [guardian](#) over a [ward](#). The bill authorizes the court to consider the appointment of an adult with a felony conviction to serve as a guardian in certain limited scenarios when specific factors are met. (Section [1](#)).

The bill removes the current comprehensive prohibition of an individual with a previous felony conviction from being appointed as a guardian. Under the bill, an individual with a previous felony conviction who is 18 years of age or older, who does not suffer from any incapacity or illness, and who is otherwise capable of fulfilling the [requirements and responsibilities](#) of a guardian may be appointed as a guardian if all of the following criteria are met:

- The potential guardian is the parent, child, sibling, spouse, grandparent, or grandchild of the proposed ward.

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DATE: 1/21/2026

- The potential guardian has disclosed his or her prior felony conviction to the court.
- The felony conviction occurred more than 10 years prior to the appointment of the person as a guardian.
- The person would otherwise be qualified to serve as a guardian under the requirements set forth in current law as provided in [Chapter 744, F.S.](#)
- After reviewing the potential guardian's qualifications, the court determines that, despite his or her felony conviction, he or she is able to carry out the requirements and responsibilities of a guardian in an appropriate manner and will act in the best interest of the proposed ward. (Section [1](#)).

The bill maintains the existing prohibition preventing the appointment of a guardian who has been found guilty of any [offense identified](#) under [s. 435.04, F.S.](#), or similar statute of another jurisdiction. As such, the bill would not permit a person found guilty of an offense listed under [s. 435.04, F.S.](#), to serve as a guardian, regardless of when the conviction was entered. (Section [1](#)).

The bill provides that an already-appointed guardian may keep his or her role in spite of a felony conviction, if the court determines that the factors cited above have been met. (Section [2](#)).

The bill has an effective date of July 1, 2026. (Section [3](#)).

FISCAL OR ECONOMIC IMPACT:

PRIVATE SECTOR:

The bill may have a positive economic impact on those wards who otherwise would have had to seek a private professional guardian due to the prohibition on prior felony convictions.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

[Guardianship Overview](#)

Ward

When a court deems an individual "legally incapacitated,"¹ a third party or a "guardian" may be appointed to make decisions on that individual's behalf.² The person who is deemed "legally incapacitated" by the court is referred to as a "ward."

[Eligibility to Serve as a Guardian](#)

Under Florida law, a "guardian" is defined as a person who has been appointed by the court to act on behalf of a ward's person, property, or both.³ Section [744.309, F.S.](#), prohibits any minor (under age 18) from serving as a guardian. Further, current law prohibits a Florida judge from serving as a guardian unless the judge is related to the ward by blood, marriage, or adoption, or has maintained a close relationship with the ward or the ward's family, and he or she serves as a guardian without compensation for such services.⁴ If the proposed guardian is not a resident of Florida, he or she must be related by lineal consanguinity to the ward, must be a legally adopted child

¹ Current state law defines an "incapacitated person" to mean a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person. See [s. 744.102\(12\), F.S.](#)

² Martinis, J., *Supported Decisionmaking: Protecting Rights, Ensuring Choices*, BIFOCAL: A Journal of the ABA Commission on Law and Aging, 36(5), pgs. 107-110 (2015), https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_36/issue_5_june2015/supported-decision-making/ (last visited January 6, 2026).

³ [S. 744.102\(9\), F.S.](#)

⁴ [S. 744.309\(1\)\(b\), F.S.](#)

or adoptive parent of the ward, or must be the spouse of the ward, to be eligible for such appointment under Florida law.⁵

Under current law, the following individuals are prohibited from being appointed as a guardian:

- Any person who has been convicted of a felony.
- Any person who, from any incapacity or illness, is incapable of discharging the duties of a guardian.
- Any person who has been judicially determined to have committed abuse, abandonment, or neglect against a child.
- Any person who has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under [s. 435.04, F.S.](#), or a similar statute of a different state.
- Any person that would otherwise be eligible for appointment but whose appointment would create a conflict of interest.⁶

Disqualifying Offenses Barring Appointment as a Guardian

Under current law, any person who has been found guilty of any of the following offenses is prohibited from being appointed to serve as a guardian, regardless of whether the offense was a misdemeanor or a felony, unless explicitly provided:⁷

- The failure to report child abuse, abandonment, or neglect.
- Sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Fraud, if the offense was a felony.
- Adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Attempt, solicitation, and conspiracy to commit an offense listed in [s. 435.04, F.S.](#)
- Murder.
- Manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Vehicular homicide.
- The killing of an unborn child by injury to the mother.
- Assault, battery, and culpable negligence, if the offense was a felony.
- Assault, if the victim of the offense was a minor.
- Aggravated assault.
- Battery, if the victim of the offense was a minor.
- Aggravated battery.
- Battery on staff of a detention or commitment facility or on a juvenile probation officer.
- Kidnapping.
- False imprisonment.
- Luring or enticing a child.
- Taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- Human trafficking.
- Human smuggling.
- Exhibiting firearms or weapons within 1,000 feet of a school.
- Possessing an electric weapon or device, destructive device, or other weapon on school property.
- Sexual battery.

⁵ [S. 744.309\(2\), F.S.](#)

⁶ [S. 744.309\(3\), F.S.](#)

⁷ [S. 435.04\(2\), F.S.](#) (Refer directly to the text of [s. 435.04, F.S.](#), for specific statutory citations related to each listed offense.)

- Prohibited acts of persons in familial or custodial authority.
- Unlawful sexual activity with certain minors.
- Female genital mutilation.
- Prostitution.
- Lewd and lascivious behavior.
- Lewdness and indecent exposure and offenses against students by authority figures.
- Arson.
- Burglary.
- Voyeurism, if the offense is a felony.
- Digital voyeurism, if the offense is a felony.
- Theft, robbery, and related crimes, if the offense is a felony.
- The fraudulent sale of controlled substances, only if the offense was a felony.
- Abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- The exploitation of an elderly person or disabled adult, if the offense was a felony.
- Incest.
- Child abuse, aggravated child abuse, or neglect of a child.
- Contributing to the delinquency or dependency of a child.
- Negligent treatment of children.
- Sexual performance by a child.
- The unlawful sale, manufacture, alteration, delivery, uttering, or possession of counterfeit-resistant prescription blanks for controlled substances.
- Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
- Resisting arrest with violence.
- Depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- Aiding in an escape.
- Aiding in the escape of juvenile inmates in correctional institutions.
- Offenses relating to obscene literature.
- Poisoning food or water.
- The prohibition on the purchase or sale of human organs and tissue.
- encouraging or recruiting another to join a criminal gang.
- Offenses relating to drug abuse prevention and control, only if the offense was a felony, or, if any other person involved in the offense was a minor.
- Sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Escape.
- Harboring, concealing, or aiding an escaped prisoner.
- The introduction of contraband into a correctional facility.
- Sexual misconduct in juvenile justice programs.
- The introduction of contraband into detention facilities.

Moreover, any person who has been found guilty of a violation of a federal law or a law in any state which constitutes a criminal offense relating to any of the following is prohibited from being appointed as a guardian:⁸

- The delivery of any goods or services under Medicaid or Medicare or any other public or private health care or health insurance program.
- Neglect or abuse of a patient in connection with the delivery of goods or services under Medicaid, Medicare, or any such program.
- Unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

⁸ S. 435.04(4), F.S.

- Fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.
- Moral turpitude, if punishable by imprisonment of a year or more.
- Criminal use of a public record or information contained in a public record as provided under [s. 817.569, F.S.](#)
- Unlawful compensation or reward for official behavior as provided under [s. 838.016, F.S.](#)
- Corruption by threat against a public servant as provided under [s. 838.021, F.S.](#)
- Official misconduct as provided under [s. 838.022, F.S.](#)
- Bid tampering as provided under [s. 838.22, F.S.](#)
- Falsifying records as provided under [s. 839.13, F.S.](#)
- Misuse of confidential information as provided under [s. 839.26, F.S.](#)

The Guardianship Process

The process to determine an individual's incapacity and the possible appointment of a guardian begins with a verified petition. The petition must provide detailed, factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the specific rights or activities the alleged incapacitated person is incapable of managing on his or her own behalf.⁹ Once a person has been determined to be incapacitated, a specific guardianship order is issued with details on specific restrictions, the role of the guardian, and the name of the guardian.¹⁰ The order must:

- Be consistent with the ward's welfare and safety;
- Clearly state the rights removed from the ward and delegated to the guardian;
- Be the least restrictive and appropriate alternative; and
- Reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.¹¹

A guardian coordinates and monitors his or her ward's services and needs, including his or her funds, as directed by the guardianship court order.¹² The ward's funds and property belong to the ward and do not become the property of the guardian. These funds must be kept separate from and accounted for independently from any of the guardian's funds.

Types of Guardianship

Guardianships can be grouped into different types based on the level of authority granted to the guardian:

- *Limited or partial guardianship*¹³ occurs when an individual has been deemed incapable of making decisions in only specific areas of life, and a guardian has the authority to decide for the individual in those specific areas only. The grants of legal authority granted or not granted to a guardian are specially noted.
- *Full or plenary guardianship*¹⁴ occurs when the court has found that an individual lacks capacity to make all legal decisions, and the guardian is authorized to make all decisions for the ward.¹⁵

⁹ [S. 744.3201, F.S.](#)

¹⁰ SS. 744.3371-.345, F.S.

¹¹ [S. 744.2005, F.S.](#)

¹² National Guardianship Association, *What is Guardianship?*, <https://www.guardianship.org/what-is-guardianship/> (last visited January 6, 2026).

¹³ See [S. 744.102\(9\)\(a\), F.S.](#): A "Limited guardian" means a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of a limited guardian.

¹⁴ See [S. 744.102\(9\)\(b\), F.S.](#): "Plenary guardian" means a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

¹⁵ Blanck, P, and Martinis, J, "The right to make choices": The National Resource Center for Supported Decisionmaking, Inclusion, 3, pgs. 24-33 (2015), https://supporteddecisionmaking.org/resource_library/the-right-to-make-choices-the-national-resource-center-for-supported-decision-making/ (last visited January 6, 2026).

Once awarded guardianship, a guardian may be further categorized based on how he or she reaches decisions for his or her ward. A guardian may substitute his or her own understanding of the ward's wishes. These substitute decisionmakers generally follow one of two standards:

- A *substituted judgement standard* means the guardian makes decisions he or she believes the ward would have wanted, if capable.
- A *best interest judgement standard* means the guardian makes decisions based on what the guardian determines to be in the ward's best interest.¹⁶

Requirements and Responsibilities of a Guardian

In 1987, then-United States Congressman Claude Pepper likened the rights that a ward has to that of a felon and posited that:

The typical ward has fewer rights than the typical convicted felon...By appointing a guardian, the court entrusts to someone else the power to choose where they will live, what medical treatment they will get and, in rare cases, when they will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen, with the exception...of the death penalty.¹⁷

The guardian, as fiduciary, must:

- Act within the scope of the authority granted by the court and as provided by law;
- Act in good faith;
- Act in a manner in the ward's best interests under the circumstances; and
- Use any special skills or expertise the guardian possesses when acting on behalf of the ward.¹⁸

Additionally, the fiduciary relationship between the guardian and the ward may not be used for the guardian's private gain, other than the remuneration for fees and expenses provided by law.¹⁹ Should a guardian breach his or her fiduciary duty to the ward, the court is authorized to intervene.²⁰

The following chart details some of the guardian's powers, either with or without court approval:

Examples of Powers That May Be Exercised by a Guardian	
Upon Court Approval ²¹	Without Court Approval ²²
<ul style="list-style-type: none"> • Enter into contracts that are appropriate for, and in the best interest of, the ward. • Perform, compromise, or refuse performance of a ward's existing contracts. • Alter the ward's property ownership interests, including selling, mortgaging, or leasing any real property (including the homestead), personal property, or any interest therein • Borrow money to be repaid from the 	<ul style="list-style-type: none"> • Retain assets owned by the ward. • Receive assets from fiduciaries or other sources. • Insure the assets of the estate against damage, loss, and liability. • Pay taxes and assessments on the ward's property. • Pay reasonable living expenses for the ward, taking into consideration the ward's current finances. • Pay incidental expenses in the administration of the estate. • Prudently invest liquid assets belonging to the ward.

¹⁶ Shalowitz, DI, et al., *The accuracy of surrogate decision makers: A systematic review*, Archives of Internal Medicine, 166(5), pgs. 493-497 (2006), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/409986> (last visited January 6, 2026).

¹⁷ *Id.*; Original citation of quote from H.R.Rep.No.100-641, at 1 (1987).

¹⁸ [S. 744.361\(1\), F.S.](#)

¹⁹ S.744.446, F.S.

²⁰ [S. 744.446\(4\), F.S.](#)

²¹ [S. 744.441, F.S.](#)

²² [S. 744.444, F.S.](#)

- **property of the ward or the ward's estate.**
- **Renegotiate, extend, renew, or modify the terms of any obligation owing to the ward.**
- **Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate.**
- **Exercise any option contained in any policy of insurance payable to the ward.**
- **Make gifts of the ward's property to members of the ward's family in estate and income tax planning.**
- **Pay reasonable funeral, interment, and grave marker expenses for the ward.**

- Sell or exercise stock subscription or conversion rights.
- Consent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise of the ward.
- Employ, pay, or reimburse persons, including attorneys, auditors, investment advisers, care managers, or agents, even if they are associated with the guardian, to advise or assist the guardian in the performance of his or her duties.
- Consent on behalf of the ward to a sterilization or abortion procedure on the ward.²³

As of August 1, 2025, the Florida Courts Clerks & Comptrollers reported that there were approximately 37,830 open or reopened guardianship cases in CCIS.²⁴ However, the reported number is likely an undercount of the total number of active cases statewide due to various reporting systems and each clerk's individual cases management system functionality.²⁵ Additionally, although filings of guardianship cases decreased slightly between 2022 and 2023, overall filings have increased by 34% in the state over the last ten years.²⁶

Currently, the most frequently referenced study estimates that the total number of American adults living under a guardianship is somewhere around 1.3 million.²⁷ However, data and statistics related to the number of guardianship cases are likely inaccurate due to limited data from participating states with centralized or computer-based accounting mechanisms for counting such documents. Available data estimates that courts control over \$50 billion in assets of those under these same guardianships or conservatorships.²⁸

OTHER RESOURCES:

[OPPAGA Report: Florida Professional Guardianship Information: 2025.](#)

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Civil Justice & Claims Subcommittee	16 Y, 0 N	1/21/2025	Jones	Mathews
Human Services Subcommittee				
Judiciary Committee				

²³ [S. 744.3215, F.S.](#)

²⁴ OPPAGA, Florida Professional Guardianship Information: 2025 (Oct. 2025) at p. 12, <https://oppaga.fl.gov/Documents/Reports/25-05.pdf> (last visited January 6, 2026).

²⁵ *Id.*

²⁶ *Id.*

²⁷ National Council on Disability, *Beyond Guardianship* (March 22, 2018),

https://www.ncd.gov/assets/uploads/reports/2018/ncd_beyond_guardianship.pdf (last visited January 6, 2026).

²⁸ *Id.*