

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 Children, Families, and Elder Affairs

BILL: SB 496

INTRODUCER: Senator Detert

SUBJECT: Guardians for Dependent Children who are Developmentally Disabled or Incapacitated

DATE: February 17, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Pre-meeting
2.			JU	
3.			AP	

I. Summary:

SB 496 creates a process to identify guardians and guardian advocates for children with developmental disabilities or incapacity and are in need of guardianship beyond their 18th birthday. The bill requires the Department of Children and Families (DCF) to create updated case plans developed in face-to-face conferences with a child and other specified persons, when appropriate. When the dependence court determines the child may have a developmental disability or incapacity, DCF is required to complete a multidisciplinary report, identify one or more individuals who are willing to serve as guardian advocate or as a plenary or limited guardian and initiate such proceedings within 180 days of the child's 17th birthday.

The bill authorizes the probate court to initiate proceedings for the minor and provide all due process rights conferred upon an adult. It also allows the child's parents to be considered as natural guardians unless the dependency or probate court determines it is not in the child's best interest or the parents' rights have been terminated.

The bill would have a significant fiscal impact on state government, requiring the staffing, training and support of DCF attorneys to initiate guardianship proceedings in probate court. Miscellaneous litigation fees such as filing fees, expert witnesses, service of process fees and in some cases fees for notices to be published in newspapers will be required.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

When a minor¹ with developmental disabilities or some level of incapacity ages out of the dependency system, there is a gap between the time he or she turns 18 years of age and the time

¹ Any person who has not attained the age of 18 years, s. 1.01(13), F.S.

a guardian advocate, plenary guardian, or limited guardian is appointed. This creates a period in which the individual who may be in need of a guardian is considered an adult but is likely unable to adequately make decisions for oneself. Two separate issues create this gap. First, the lack of a procedure within the dependency system to identify adults willing to serve as guardians or guardian advocates for these minors as they reach the age of 18 years of age, and second, a jurisdictional issue in which probate courts only exercise jurisdiction and begin guardianship proceedings after the child reaches 18 years of age. The distinction in statute between adult guardianships and guardianship for minors creates the largest barrier to getting guardians for minors who need them when they turn 18 years of age.

Dependency courts work primarily under ch. 39, F.S., handling cases dealing with abandonment, abuse, and neglect of children. Chapters 731 through 735, 744, and 747, F.S., deal with wills, trusts, estates, guardianships, conservatorships, and other property and succession matters.

The department is required to assist youth 13 to 18 years of age who are in foster care to develop the skills necessary for successful transition to adulthood. The Federal Fostering Connections to Success and Increasing Adoptions Act of 2008 requires DCF within 90 days of the child's 17th birthday to provide the court with an updated case plan that includes specific information related to the independent living skills that the child has required.

January 1, 2014, Florida's law making it possible for young adults with a disability to remain in foster care until age 22 became effective. An average of 60 young adults with developmental disabilities reach 18 years of age annually while in licensed foster care.² Some of these young adults reside in supportive housing provided by the Agency for Persons with Disabilities (APD). Unless a court adjudicates the young adult incapacitated and appoints a guardian, the young adult is able to leave APD-licensed housing.

Proceedings through probate court cannot begin until a child turns 18 years of age. Often probate court proceedings can take 6 months or longer before a final order is entered. This creates a gap between the time the child turns 18 and a guardian is appointed. There is a wide range of options to provide decision-making assistance to those with developmental disabilities or other incapacity that are not as restrictive as guardianships.³ Guardianships that place decision-making authority for property and person with another individual require an examining committee to determine that the alleged incapacitated adult lacks capacity and an adjudication of incapacity is required by a judge.⁴ This form of guardianship is considered the most restrictive, and should be a last resort as it removes fundamental and civil rights of an individual.

For adult guardianships, Florida Statutes require an adjudication of incapacity based on the recommendation of an examining committee, the adult must have an attorney appointed to represent them, and the adult must be present at the hearing before a guardian is appointed.⁵ For guardianship of a minor, an adjudication of incapacity is not required, and attorney is not

² Department of Children and Families, *Senate Bill 496 Analysis* (Jan. 23, 2015) (on file with the Senate Committee on Children, Families, and Elder Affairs).

³ Florida Developmental Disabilities Council, Inc., *Lighting the Way to Guardianships and Other Decision-Making Alternatives: A Manual for Individuals and Families* (2010).

⁴ Section 744.331, F.S.

⁵ Section 744.331, F.S.

required, nor is the minor required to be present at the hearing.^{6,7} These due process protections for minors are waived because the minor is not an adult and the guardianship of a minor terminates by law upon reaching 18 years of age.

Under current law, probate courts would not entertain a petition for an adult guardianship for a minor. Currently, for minors who have been identified as needing a guardianship as an adult, DCF recruits pro bono attorneys with the required experience to file guardianship petitions in probate court.

III. Effect of Proposed Changes:

Section 1 amends s. 39.701, F.S., to require DCF to develop an updated case plan in a face-to-face conference with a child who may be developmentally disabled or incapacitated and, if appropriate, the child's attorney, any court-appointed guardian ad litem, the temporary custodian of the child and the parent, if the parent's rights have not been terminated.

If the dependency court determines at the first judicial review hearing after the child's 17th birthday that the child may be developmentally disabled or may be incapacitated, DCF is required to:

1. Complete a multidisciplinary report, which must include, but is not limited to, a psychosocial evaluation if one has not been completed within the previous 2 years;
2. Identify one or more individuals who are willing to serve as the guardian advocate, plenary guardian or limited guardian. The child's parents may not be considered unless the court issues a written order finding such an appointment is in the child's best interest; and
3. Initiate proceedings within 180 days of the child's 17th birthday for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child in the court of proper jurisdiction.

In the event another interested party initiates proceedings for the appointment of a guardian advocate, plenary guardian, or limited guardian, the bill requires DCF to provide all necessary documentation and information to the petitioner within 45 days after the first judicial review hearing after the child's 17th birthday.

The bill also specifies that any proceeding seeking appointment of a guardian advocate, plenary guardian, or limited guardian must be conducted in the probate court not the dependency court.

Section 2 amends s. 393.12, F.S., authorizing the probate court to take jurisdiction of a minor who is the subject of a chapter 39 proceeding, and initiate guardianship proceedings once the minor reaches the age of 17 years and 6 months or anytime thereafter. The minor shall be provided all due process rights conferred upon an adult.

⁶ Section 744.3021, F.S.

⁷ Section 744.342, F.S.

Section 3 amends s. 744.301, F.S., clarifying that if a parent's rights have been terminated they cannot be natural guardians of the minor, but if the minor is the subject of a chapter 39 proceeding, and the parents retain their rights, they can be natural guardians unless the court finds it is not in the child's best interest.

Section 4 amends s.744.3021, F.S., to require minors who are the subject of a chapter 39 proceeding and aged 17 years and 6 months or older be given the same due process rights as an adult. An order of adjudication of incapacity and letters of limited or plenary guardianship may issue upon the minor's 18th birthday or as soon thereafter as possible.

Section 5 creates an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill requires DCF to file or initiate guardianship proceedings in probate court for youth who are aging out of foster care and whom the department believes may not be legally competent to handle decisions regarding their person or property. The department estimates it will initiate approximately 90 such proceedings annually.⁸ This would cost an estimated \$500,000 to \$718,000⁹ depending on the number and nature of the filings. Of the totals, \$23,000 to \$35,000 of the expense would be non-recurring.¹⁰ Additionally, the

⁸ Department of Children and Families, *Senate Bill 496 Analysis* (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁹ *Id.*

¹⁰ *Id.*

costs for psychosocial evaluations, service of process, background screening fees for potential guardians and other case related fees are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39,701, 393.12, 744.301 and 744.3021.

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.