

1 file a petition for a standby guardian;
2 requiring that notice of the appointment
3 hearing be served on the ward's next of kin;
4 clarifying when a standby guardian may assume
5 the duties of guardian; requiring that each
6 standby guardian submit to credit and criminal
7 background checks; amending s. 744.3115, F.S.;
8 providing a cross-reference; amending s.
9 744.3135, F.S.; providing procedures for
10 completing a guardians' criminal background
11 investigation; authorizing a guardian to use
12 inkless electronic fingerprinting equipment
13 that is available for background investigations
14 of public employees; providing that a guardian
15 need not be rescreened if he or she uses
16 certain inkless electronic fingerprinting
17 equipment; requiring the Statewide Public
18 Guardianship Office to adopt a rule for credit
19 investigations of guardians; amending s.
20 744.3145, F.S.; reducing the time in which a
21 guardian must complete the education courses
22 from 1 year to 4 months; amending s. 744.3215,
23 F.S.; providing that an incapacitated person
24 retains the right to receive necessary services
25 and rehabilitation necessary to maximize the
26 quality of the person's life; amending s.
27 744.331, F.S.; requiring that the court appoint
28 an attorney from a specified registry;
29 requiring attorneys to complete certain
30 training programs; providing that a member of
31 the examining committee may not be related to

1 or associated with certain persons; prohibiting
2 a person who served on an examining committee
3 from being appointed as the guardian; requiring
4 each member of an examining committee to file
5 an affidavit stating that he or she has
6 completed the mandatory training; providing for
7 training programs; requiring each member to
8 report the time and date that he or she
9 examined the person alleged to be
10 incapacitated; providing for an award of
11 attorney's fees; amending s. 744.341, F.S.;
12 requiring the voluntary guardian to include
13 certain information in the annual report;
14 requiring that certain specified information be
15 included in the notice to terminate a voluntary
16 guardianship; amending s. 744.361, F.S.;
17 requiring a professional guardian to ensure
18 that each of his or her wards is personally
19 visited at least quarterly; providing for the
20 assessment of certain conditions during the
21 personal visit; amending s. 744.365, F.S.;
22 requiring that the verified inventory include
23 information on any trust to which a ward is a
24 beneficiary; amending s. 744.367, F.S.;
25 requiring that the annual report of the
26 guardian be filed on or before April 1 of each
27 year; amending s. 744.3675, F.S.; requiring
28 that the annual guardianship plan include
29 information on the mental condition of the
30 ward; providing for an annual guardianship plan
31 for wards who are minors; amending s. 744.3678,

1 F.S.; providing that property of the ward which
2 is not under the control of the guardian,
3 including certain trusts, is not subject to
4 annual accounting; requiring certain
5 documentation for the annual accounting;
6 amending s. 744.3679, F.S.; removing a
7 provision prohibiting the clerk of court from
8 having responsibility for monitoring or
9 auditing accounts in certain cases; amending s.
10 744.368, F.S.; requiring that the verified
11 inventory and the accountings be audited within
12 a specified time period; amending s. 744.441,
13 F.S.; requiring the court to retain oversight
14 for assets of a ward transferred to a trust;
15 creating s. 744.442, F.S.; providing that a
16 guardian may designate a surrogate guardian to
17 exercise the powers of the guardian if the
18 guardian is unavailable to act; requiring the
19 surrogate guardian to be a professional
20 guardian; providing the procedures to be used
21 in appointing a surrogate guardian; providing
22 the duties of a surrogate guardian; requiring
23 the guardian to be liable for the acts of the
24 surrogate guardian; authorizing the guardian to
25 terminate the services of the surrogate
26 guardian by filing a written notice of the
27 termination with the court; amending s.
28 744.464, F.S.; removing the state attorney from
29 the list of persons to be served a notice of a
30 hearing on restoration of capacity; removing a
31 time limitation on the filing of a suggestion

1 of capacity; amending s. 744.511, F.S.;

2 providing that a ward who is a minor need not

3 be served with the final report of a removed

4 guardian; amending s. 744.527, F.S.; providing

5 that final reports for a deceased ward be filed

6 at a specified time; amending s. 744.528, F.S.;

7 providing for a notice of the hearing for

8 objections to a report filed by a guardian;

9 amending s. 744.708, F.S.; requiring a public

10 guardian to ensure that each of his or her

11 wards is personally visited at least quarterly;

12 providing for the assessment of certain

13 conditions during the personal visit; amending

14 s. 765.101, F.S.; redefining the term "health

15 care decision" to include informed consent for

16 mental health treatment services; amending s.

17 28.345, F.S.; exempting a public guardian from

18 paying court-related fees and charges; amending

19 ss. 121.091, 709.08, and 744.1085, F.S.;

20 conforming cross-references; reenacting s.

21 117.107(4), F.S., relating to prohibited acts

22 of a notary public, to incorporate the

23 amendment made to s. 744.3215, F.S., in a

24 reference thereto; amending s. 318.18, F.S.;

25 authorizing a county to impose a surcharge on

26 certain civil penalties to fund local

27 participation in the public guardianship

28 program; prescribing prerequisites for imposing

29 the surcharge; providing a limit on the

30 surcharge; creating s. 938.065, F.S.; requiring

31 that a specified surcharge be assessed against

1 all misdemeanor offenses; providing that the
2 clerk of the court may retain a service charge;
3 directing that the funds collected be used to
4 fund public guardianship programs; providing an
5 effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Section 744.102, Florida Statutes, is
10 amended to read:

11 744.102 Definitions.--As used in this chapter, the
12 term:

13 (1) "Attorney for the alleged incapacitated person"
14 means an attorney who represents the alleged incapacitated
15 person. ~~The Such~~ attorney shall represent the expressed wishes
16 of the alleged incapacitated person to the extent it is
17 consistent with the rules regulating The Florida Bar.

18 (2) "Audit" means a systematic review of financial
19 documents with adherence to generally accepted auditing
20 standards.

21 (3)~~(2)~~ "Clerk" means the clerk or deputy clerk of the
22 court.

23 (4)~~(3)~~ "Corporate guardian" means a corporation
24 authorized to exercise fiduciary or guardianship powers in
25 this state and includes a nonprofit corporate guardian.

26 (5)~~(4)~~ "Court" means the circuit court.

27 (6)~~(5)~~ "Court monitor" means a person appointed by the
28 court under ~~pursuant to~~ s. 744.107 to provide the court with
29 information concerning a ward.

30 (7)~~(6)~~ "Estate" means the property of a ward subject
31 to administration.

1 ~~(8)(7)~~ "Foreign guardian" means a guardian appointed
2 in another state or country.

3 ~~(9)(8)~~ "Guardian" means a person who has been
4 appointed by the court to act on behalf of a ward's person or
5 property, or both.

6 (a) "Limited guardian" means a guardian who has been
7 appointed by the court to exercise the legal rights and powers
8 specifically designated by court order entered after the court
9 has found that the ward lacks the capacity to do some, but not
10 all, of the tasks necessary to care for his or her person or
11 property, or after the person has voluntarily petitioned for
12 appointment of a limited guardian.

13 (b) "Plenary guardian" means a person who has been
14 appointed by the court to exercise all delegable legal rights
15 and powers of the ward after the court has found that the ward
16 lacks the capacity to perform all of the tasks necessary to
17 care for his or her person or property.

18 ~~(10)(9)~~ "Guardian ad litem" means a person who is
19 appointed by the court having jurisdiction of the guardianship
20 or a court in which a particular legal matter is pending to
21 represent a ward in that proceeding.

22 ~~(11)(10)~~ "Guardian advocate" means a person appointed
23 by a written order of the court to represent a person with
24 developmental disabilities under s. 393.12. As used in this
25 chapter, the term does not apply to a guardian advocate
26 appointed for a person determined incompetent to consent to
27 treatment under s. 394.4598.

28 ~~(12)(11)~~ "Incapacitated person" means a person who has
29 been judicially determined to lack the capacity to manage at
30 least some of the property or to meet at least some of the
31 essential health and safety requirements of the ~~such~~ person.

1 (a) To "manage property" means to take those actions
2 necessary to obtain, administer, and dispose of real and
3 personal property, intangible property, business property,
4 benefits, and income.

5 (b) To "meet essential requirements for health or
6 safety" means to take those actions necessary to provide the
7 health care, food, shelter, clothing, personal hygiene, or
8 other care without which serious and imminent physical injury
9 or illness is more likely than not to occur.

10 ~~(13)~~~~(12)~~ "Minor" means a person under 18 years of age
11 whose disabilities have not been removed by marriage or
12 otherwise.

13 ~~(14)~~~~(13)~~ "Next of kin" means those persons who would
14 be heirs at law of the ward or alleged incapacitated person if
15 ~~the such~~ person were deceased and includes the lineal
16 descendants of ~~the such~~ ward or alleged incapacitated person.

17 ~~(15)~~~~(14)~~ "Nonprofit corporate guardian" means a
18 nonprofit corporation organized for religious or charitable
19 purposes and existing under the laws of this state.

20 ~~(16)~~~~(15)~~ "Preneed guardian" means a person named in a
21 written declaration to serve as guardian in the event of the
22 incapacity of the declarant as provided in s. 744.3045.

23 ~~(17)~~~~(16)~~ "Professional guardian" means any guardian
24 who ~~receives or~~ has at any time ~~received compensation for~~
25 ~~services~~ rendered services to three or more ~~than two~~ wards as
26 their guardian. A person serving as a guardian for two or more
27 relatives as defined in s. 744.309(2) is not considered a
28 professional guardian. A public guardian shall be considered a
29 professional guardian for purposes of regulation, education,
30 and registration.

31

1 ~~(18)~~~~(17)~~ "Property" means both real and personal
2 property or any interest in it and anything that may be the
3 subject of ownership.

4 ~~(19)~~~~(18)~~ "Standby guardian" means a person empowered
5 to assume the duties of guardianship upon the death or
6 adjudication of incapacity of the last surviving natural or
7 appointed guardian.

8 ~~(20)~~ "Surrogate guardian" means a guardian designated
9 according to s. 744.442.

10 ~~(21)~~~~(19)~~ "Totally incapacitated" means incapable of
11 exercising any of the rights enumerated in s. 744.3215(2) and
12 (3).

13 ~~(22)~~~~(20)~~ "Ward" means a person for whom a guardian has
14 been appointed.

15 Section 2. Subsection (10) of section 744.1083,
16 Florida Statutes, is amended to read:

17 744.1083 Professional guardian registration.--

18 (10) A state college or university or an independent
19 college or university described in s. 1009.98(3)(a), may, but
20 is not required to, register as a professional guardian under
21 this section. If a state college or university or independent
22 college or university elects to register as a professional
23 guardian under this subsection, the requirements of
24 subsections (3) and (4) ~~subsection (3)~~ do not apply and the
25 registration must include only the name, address, and employer
26 identification number of the registrant.

27 Section 3. Section 744.301, Florida Statutes, is
28 amended to read:

29 744.301 Natural guardians.--

30 (1) The mother and father jointly are natural
31 guardians of their own children and of their adopted children,

1 during minority. If one parent dies, the surviving parent
2 remains the sole natural guardian even if he or she the
3 ~~natural guardianship shall pass to the surviving parent, and~~
4 ~~the right shall continue even though the surviving parent~~
5 remarries. If the marriage between the parents is dissolved,
6 the natural guardianship belongs ~~shall belong~~ to the parent to
7 whom ~~the~~ custody of the child is awarded. If the parents are
8 given joint custody, then both ~~shall~~ continue as natural
9 guardians. If the marriage is dissolved and neither the
10 father nor the mother is given custody of the child, neither
11 shall act as natural guardian of the child. The mother of a
12 child born out of wedlock is the natural guardian of the child
13 and is entitled to primary residential care and custody of the
14 child unless a court of competent jurisdiction enters an order
15 stating otherwise.

16 (2) ~~The Natural guardian or~~ guardians are authorized,
17 on behalf of any of their minor children, to settle and
18 consummate a settlement of any claim or cause of action
19 accruing to any of their minor children for damages to the
20 person or property of any of said minor children and to
21 collect, receive, and manage, and dispose of the proceeds of
22 any such settlement and ~~of any other~~ real or personal property
23 distributed from an estate or trust or proceeds from a life
24 insurance policy to, or otherwise accruing to the benefit of,
25 the child during minority, when the amounts received, in the
26 aggregate, do amount involved in any instance does not exceed
27 \$15,000, without appointment, authority, or bond.

28 (3) All instruments executed by a natural guardian for
29 the benefit of the ward under the powers specified ~~provided~~
30 ~~for~~ in subsection (2) shall be binding on the ward. The
31 natural guardian may not, without a court order, use the

1 property of the ward for the guardian's benefit or to satisfy
2 the guardian's support obligation to the ward.

3 ~~(4)(a) In any case where a minor has a claim for~~
4 ~~personal injury, property damage, or wrongful death in which~~
5 ~~the gross settlement for the claim of the minor exceeds~~
6 ~~\$15,000, the court may, prior to the approval of the~~
7 ~~settlement of the minor's claim, appoint a guardian ad litem~~
8 ~~to represent the minor's interests. In any case in which the~~
9 ~~gross settlement involving a minor equals or exceeds \$25,000,~~
10 ~~the court shall, prior to the approval of the settlement of~~
11 ~~the minor's claim, appoint a guardian ad litem to represent~~
12 ~~the minor's interests. The appointment of the guardian ad~~
13 ~~litem must be without the necessity of bond or a notice. The~~
14 ~~duty of the guardian ad litem is to protect the minor's~~
15 ~~interests. The procedure for carrying out that duty is as~~
16 ~~prescribed in the Florida Probate Rules. If a legal guardian~~
17 ~~of the minor has previously been appointed and has no~~
18 ~~potential adverse interest to the minor, the court may not~~
19 ~~appoint a guardian ad litem to represent the minor's~~
20 ~~interests, unless the court determines that the appointment is~~
21 ~~otherwise necessary.~~

22 ~~(b) Unless waived, the court shall award reasonable~~
23 ~~fees and costs to the guardian ad litem to be paid out of the~~
24 ~~gross proceeds of the settlement.~~

25 Section 4. Section 744.3025, Florida Statutes, is
26 created to read:

27 744.3025 Claims of minors.--

28 (1)(a) The court may appoint a guardian ad litem to
29 represent the minor's interest, before approving a settlement
30 of the minor's portion of the claim, in any case in which a
31 minor has a claim for personal injury, property damage,

1 wrongful death, or other cause of action in which the gross
2 settlement of the claim exceeds \$15,000.

3 (b) The court shall appoint a guardian ad litem to
4 represent the minor's interest before approving a settlement
5 of the minor's claim, in any case in which the gross
6 settlement involving a minor equals or exceeds \$50,000.

7 (c) The appointment of the guardian ad litem must be
8 without the necessity of bond or notice.

9 (d) The duty of the guardian ad litem is to protect
10 the minor's interests as described in the Florida Probate
11 Rules.

12 (e) A court need not appoint a guardian ad litem for
13 the child if a guardian of the minor has previously been
14 appointed and that guardian has no potential adverse interest
15 to the minor. A court may appoint a guardian ad litem if the
16 court believes a guardian ad litem is necessary to protect the
17 interests of the minor.

18 (2) Unless waived, the court shall award reasonable
19 fees and costs to the guardian ad litem to be paid out of the
20 gross proceeds of the settlement.

21 Section 5. Subsection (3) of section 744.3031, Florida
22 Statutes, is amended, and subsection (8) is added to that
23 section, to read:

24 744.3031 Emergency temporary guardianship.--

25 (3) The authority of an emergency temporary guardian
26 expires 90 ~~60~~ days after the date of appointment or when a
27 guardian is appointed, whichever occurs first. The authority
28 of the emergency temporary guardian may be extended for an
29 additional 90 ~~30~~ days upon a showing that the emergency
30 conditions still exist.

31

1 (8)(a) An emergency temporary guardian shall file a
2 final report no later than 30 days after the expiration of the
3 emergency temporary guardianship.

4 (b) An emergency temporary guardianship is a guardian
5 for the property. The final report must consist of a verified
6 inventory of the property, as provided in s. 744.365, as of
7 the date the letters of emergency temporary guardianship were
8 issued, a final accounting that gives a full and correct
9 account of the receipts and disbursements of all the property
10 of the ward over which the guardian had control, and a
11 statement of the property of the ward on hand at the end of
12 the emergency temporary guardianship. If the emergency
13 temporary guardian becomes the successor guardian of the
14 property, the final report must satisfy the requirements of
15 the initial guardianship report for the guardian of the
16 property as provided in s. 744.362.

17 (c) If the emergency temporary guardian is a guardian
18 of the person, the final report must summarize the activities
19 of the temporary guardian with regard to residential
20 placement, medical condition, mental health and rehabilitative
21 services, and the social condition of the ward to the extent
22 of the authority granted to the temporary guardian in the
23 letters of guardianship. If the emergency temporary guardian
24 becomes the successor guardian of the person, the report must
25 satisfy the requirements of the initial report for a guardian
26 of the person as stated in s. 744.362.

27 (d) A copy of the final report of the emergency
28 temporary guardianship shall be served on the successor
29 guardian and the ward.

30 Section 6. Section 744.304, Florida Statutes, is
31 amended to read:

1 744.304 Standby guardianship.--

2 (1) Upon a petition by the natural guardians or a
3 guardian appointed under s. 744.3021, the court may appoint a
4 standby guardian of the person or property of a minor ~~or~~
5 ~~consent of both parents, natural or adoptive, if living, or of~~
6 ~~the surviving parent, a standby guardian of the person or~~
7 ~~property of a minor may be appointed by the court.~~ The court
8 may also appoint an alternate to the guardian to act if the
9 standby guardian does not serve or ceases to serve after
10 appointment. Notice of a hearing on the petition must be
11 served on the parents, natural or adoptive, and on any
12 guardian currently serving unless the notice is waived in
13 writing by them or waived by the court for good cause shown
14 ~~shall renounce, die, or become incapacitated after the death~~
15 ~~of the last surviving parent of the minor.~~

16 (2) Upon petition of a currently serving guardian, a
17 standby guardian of the person or property of an incapacitated
18 person may be appointed by the court. Notice of the hearing
19 shall be served on the ward's next of kin.

20 (3) The standby guardian or alternate shall be
21 empowered to assume the duties of guardianship ~~his or her~~
22 ~~office~~ immediately on the death, removal, or resignation of
23 the guardian of a minor, or on the death or adjudication of
24 incapacity of the last surviving natural guardian ~~or adoptive~~
25 ~~parent~~ of a minor, or upon the death, removal, or resignation
26 of the guardian for an adult. ~~The; however, such a~~ guardian of
27 the ward's property may not be empowered to deal with the
28 ward's property, other than to safeguard it, before ~~prior to~~
29 issuance of letters of guardianship. If the ward
30 ~~incapacitated person~~ is over the age of 18 years, the court
31 shall conduct a hearing as provided in s. 744.331 before

1 confirming the appointment of the standby guardian, unless the
2 ward has previously been found to be incapacitated.

3 (4) Within 20 days after assumption of duties as
4 guardian, a standby guardian shall petition for confirmation
5 of appointment. If the court finds the standby guardian to be
6 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309
7 and 744.312, appointment of the guardian must be confirmed.
8 Each guardian so confirmed shall file an oath in accordance
9 with s. 744.347, ~~and~~ shall file a bond and submit to a credit
10 and criminal investigation as set forth in s. 744.3135, if
11 required. Letters of guardianship must then be issued in the
12 manner provided in s. 744.345.

13 (5) After the assumption of duties by a standby
14 guardian, the court shall have jurisdiction over the guardian
15 and the ward.

16 Section 7. Section 744.3115, Florida Statutes, is
17 amended to read:

18 744.3115 Advance directives for health care.--In each
19 proceeding in which a guardian is appointed under this
20 chapter, the court shall determine whether the ward, prior to
21 incapacity, has executed any valid advance directive under
22 ~~pursuant to~~ chapter 765. If any ~~such~~ advance directive exists,
23 the court shall specify in its order and letters of
24 guardianship what authority, if any, the guardian shall
25 exercise over the surrogate. Pursuant to the grounds listed in
26 s. 765.105, the court, upon its own motion, may, with notice
27 to the surrogate and any other appropriate parties, modify or
28 revoke the authority of the surrogate to make health care
29 decisions for the ward. For purposes of this section, the term
30 "health care decision" has the same meaning as in s. 765.101.
31

1 Section 8. Section 744.3135, Florida Statutes, is
2 amended to read:

3 744.3135 Credit and criminal investigation.--

4 (1) The court may require a nonprofessional guardian
5 and shall require a professional or public guardian, and all
6 employees of a professional guardian who have a fiduciary
7 responsibility to a ward, to submit, at their own expense, to
8 an investigation of the guardian's credit history and to
9 undergo level 2 background screening as required under s.
10 435.04. If a credit or criminal investigation is required, the
11 court must consider the results of any investigation before
12 appointing a guardian. At any time, the court may require a
13 guardian or its employees to submit to an investigation of the
14 person's credit history and complete a level 1 background
15 screening as set forth in s. 435.03. The court shall consider
16 the results of any investigation when reappointing a guardian.
17 The clerk of the court shall maintain a file on each guardian
18 appointed by the court and retain documentation of the result
19 of any investigation conducted under this section in the file.
20 A professional guardian must pay the clerk of the court a fee
21 of up to \$7.50 for handling and processing professional
22 guardian files.

23 (2) The court and the Statewide Public Guardianship
24 Office shall accept the satisfactory completion of a criminal
25 background investigation by any method described in this
26 subsection. A guardian satisfies the requirements of this
27 section by undergoing:

28 (a) An inkless electronic fingerprint criminal
29 background investigation. A guardian may use any inkless
30 electronic fingerprinting equipment used for criminal
31 background investigations of public employees. The guardian

1 shall pay the actual costs incurred by the Federal Bureau of
2 Investigation or the Department of Law Enforcement for the
3 criminal background investigation. The agency that operates
4 the equipment used by the guardian may charge the guardian an
5 additional fee, not to exceed \$10, for the use of the
6 equipment. The agency completing the investigation must
7 immediately send the results of the criminal background
8 investigation to the clerk of the court and the Statewide
9 Public Guardianship Office. The clerk of the court shall
10 maintain the results in the guardian's file and shall make the
11 results available to the court; or

12 (b) A criminal background investigation using a
13 fingerprint card. The clerk of the court shall obtain
14 fingerprint cards from the Federal Bureau of Investigation and
15 make them available to guardians. Any guardian who is so
16 required shall have his or her fingerprints taken and forward
17 the proper fingerprint card along with the necessary fee to
18 the Florida Department of Law Enforcement for processing. The
19 ~~professional guardian shall pay to the clerk of the court a~~
20 ~~fee of up to \$7.50 for handling and processing professional~~
21 ~~guardian files.~~ The results of the fingerprint card background
22 investigations checks shall be forwarded to the clerk of the
23 court who shall maintain the results in the guardian's a
24 ~~guardian~~ file and shall make the results available to the
25 court and the Statewide Public Guardianship Office. A
26 professional guardian, and all employees of a professional
27 guardian who have a fiduciary responsibility to a ward must
28 complete, at his or her own expense, a level 1 background
29 screening as set forth in s. 435.03, before and at least once
30 every 2 years after the date the guardian is appointed.
31 However, a person is not required to undergo a criminal

1 background investigation if he or she has been screened using
2 inkless electronic fingerprinting equipment that is capable of
3 notifying the clerk of the court and the Statewide Public
4 Guardianship Office of any crime charged against the person.

5 (3)(a) A professional guardian, and each employee of a
6 professional guardian who has a fiduciary responsibility to a
7 ward must complete, at the person's own expense, an
8 investigation of the credit history of the person before and
9 at least once every 2 years after the date of the guardian's
10 appointment.

11 (b) The Statewide Public Guardianship Office shall
12 adopt a rule detailing the acceptable methods for completing a
13 credit investigation under this section. If appropriate, the
14 Statewide Public Guardianship Office may administer credit
15 investigations. If the office chooses to administer the credit
16 investigation, the office may adopt a rule setting a fee, not
17 to exceed \$25, to reimburse the costs associated with the
18 administration of a credit investigation.

19 (4) The Statewide Public Guardianship Office may
20 inspect at any time the results of any credit or criminal
21 investigation of a public or professional guardian conducted
22 under this section. The office shall maintain copies of the
23 credit or criminal results in the guardian's registration
24 file. If the results of a credit or criminal investigation of
25 a public or professional guardian have not been forwarded to
26 the Statewide Public Guardianship Office by the investigating
27 agency, the clerk of the court shall forward copies of the
28 results of the investigations to the office upon receiving
29 them. If credit or criminal investigations are required, the
30 court must consider the results of the investigations before
31 appointing a guardian. Professional guardians and all

1 ~~employees of a professional guardian who have a fiduciary~~
2 ~~responsibility to a ward, so appointed, must resubmit, at~~
3 ~~their own expense, to an investigation of credit history, and~~
4 ~~undergo level 1 background screening as required under s.~~
5 ~~435.03, at least every 2 years after the date of their~~
6 ~~appointment. At any time, the court may require guardians or~~
7 ~~their employees to submit to an investigation of credit~~
8 ~~history and undergo level 1 background screening as required~~
9 ~~under s. 435.03. The court must consider the results of these~~
10 ~~investigations in reappointing a guardian.~~

11 ~~(1) Upon receiving the results of a credit or criminal~~
12 ~~investigation of any public or professional guardian, the~~
13 ~~clerk of the court shall forward copies of the results to the~~
14 ~~Statewide Public Guardianship Office in order that the results~~
15 ~~may be maintained in the guardian's registration file.~~

16 ~~(5)(2)~~ The requirements of this section do ~~does~~ not
17 apply to a professional guardian, or to the employees of a
18 professional guardian, which is a trust company, a state
19 banking corporation or state savings association authorized
20 and qualified to exercise fiduciary powers in this state, or a
21 national banking association or federal savings and loan
22 association authorized and qualified to exercise fiduciary
23 powers in this state.

24 Section 9. Subsection (4) of section 744.3145, Florida
25 Statutes, is amended to read:

26 744.3145 Guardian education requirements.--

27 (4) Each person appointed by the court to be a
28 guardian must complete the required number of hours of
29 instruction and education within 4 months ~~1 year~~ after his or
30 her appointment as guardian. The instruction and education
31 must be completed through a course approved by the chief judge

1 of the circuit court and taught by a court-approved
2 organization. Court-approved organizations may include, but
3 are not limited to, community or junior colleges, guardianship
4 organizations, and the local bar association or The Florida
5 Bar.

6 Section 10. Paragraph (i) of subsection (1) and
7 subsection (2) of section 744.3215, Florida Statutes, are
8 amended to read:

9 744.3215 Rights of persons determined incapacitated.--

10 (1) A person who has been determined to be
11 incapacitated retains the right:

12 (i) To receive necessary services and rehabilitation
13 necessary to maximize the quality of life.

14 (2) Rights that may be removed from a person by an
15 order determining incapacity but not delegated to a guardian
16 include the right:

17 (a) To marry. If the right to enter into a contract
18 has been removed, the right to marry is subject to court
19 approval.

20 (b) To vote.

21 (c) To personally apply for government benefits.

22 (d) To have a driver's license.

23 (e) To travel.

24 (f) To seek or retain employment.

25 Section 11. Subsections (2), (3), and (7) of section
26 744.331, Florida Statutes, are amended to read:

27 744.331 Procedures to determine incapacity.--

28 (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--

29 (a) When a court appoints an attorney for an alleged
30 incapacitated person, the court must appoint an attorney who
31 is included in the attorney registry compiled by the circuit's

1 Article V indigent services committee. Appointments must be
2 made on a rotating basis, taking into consideration conflicts
3 arising under this chapter.

4 ~~(b)(a)~~ The court shall appoint an attorney for each
5 person alleged to be incapacitated in all cases involving a
6 petition for adjudication of incapacity. The alleged
7 incapacitated person may substitute her or his own attorney
8 for the attorney appointed by the court, subject to court
9 approval.

10 ~~(c)(b)~~ Any attorney representing an alleged
11 incapacitated person may not serve as guardian of the alleged
12 incapacitated person or as counsel for the guardian of the
13 alleged incapacitated person or the petitioner.

14 (d) Effective January 1, 2006, an attorney seeking to
15 be appointed by a court for incapacity and guardianship
16 proceedings must have completed a minimum of 8 hours of
17 education in guardianship. A court may waive the initial
18 training requirement for an attorney who has served as a
19 court-appointed attorney in incapacity proceedings or as an
20 attorney of record for guardians for not less than 3 years.

21 (3) EXAMINING COMMITTEE.--

22 (a) Within 5 days after a petition for determination
23 of incapacity has been filed, the court shall appoint an
24 examining committee consisting of three members. One member
25 must be a psychiatrist or other physician. The remaining
26 members must be either a psychologist, gerontologist, another
27 psychiatrist, or other physician, a registered nurse, nurse
28 practitioner, licensed social worker, a person with an
29 advanced degree in gerontology from an accredited institution
30 of higher education, or other person who by knowledge, skill,
31 experience, training, or education may, in the court's

1 discretion, advise the court in the form of an expert opinion,
2 including a professional guardian. One of three members of the
3 committee must have knowledge of the type of incapacity
4 alleged in the petition. Unless good cause is shown, the
5 attending or family physician may not be appointed to the
6 committee. If the attending or family physician is available
7 for consultation, the committee must consult with the
8 physician. Members of the examining committee may not be
9 related to or associated with one another, ~~or~~ with the
10 petitioner, with counsel for the petitioner or the proposed
11 guardian, or the person alleged to be totally or partially
12 incapacitated. A member may not be employed by any private or
13 governmental agency that has custody of, or furnishes,
14 services or subsidies, directly or indirectly, to the person
15 or the family of the person alleged to be incapacitated or for
16 whom a guardianship is sought. A petitioner may not serve as
17 a member of the examining committee. Members of the examining
18 committee must be able to communicate, either directly or
19 through an interpreter, in the language that the alleged
20 incapacitated person speaks or to communicate in a medium
21 understandable to the alleged incapacitated person if she or
22 he is able to communicate. The clerk of the court shall send
23 notice of the appointment to each person appointed no later
24 than 3 days after the court's appointment.

25 (b) A person who has been appointed to serve as a
26 member of an examining committee to examine an alleged
27 incapacitated person may not thereafter be appointed as a
28 guardian for the person who was the subject of the
29 examination.

30 (c) Each person appointed to an examining committee
31 must file an affidavit with the court stating that he or she

1 has completed the required courses or will do so no later than
2 4 months after his or her initial appointment. Each year, the
3 chief judge of the circuit must prepare a list of persons
4 qualified to be members of the examining committee.

5 (d) A member of an examining committee must complete a
6 minimum of 4 hours of initial training. The person must
7 complete 2 hours of continuing education during each 2-year
8 period after the initial training. The initial training and
9 continuing education program must be developed under the
10 supervision of the Statewide Public Guardianship Office, in
11 consultation with the Florida Conference of Circuit Court
12 Judges, the Elder Law and Real Property, Probate and Trust Law
13 sections of The Florida Bar, the Florida State Guardianship
14 Association, and the Florida Guardianship Foundation. The
15 court may waive the initial training requirement for a person
16 who has served for not less than 5 years on examining
17 committees. If a person wishes to obtain his or her continuing
18 education on the Internet or by watching a video course, the
19 person must first obtain the approval of the chief judge
20 before taking an Internet or video course.

21 (e)(b) Each member of the examining committee shall
22 examine the person. ~~Each~~ ~~The~~ examining committee member must
23 ~~shall~~ determine the alleged incapacitated person's ability to
24 exercise those rights specified in s. 744.3215. In addition to
25 the examination, ~~each~~ ~~the~~ examining committee member must
26 ~~shall~~ have access to, and may consider, previous examinations
27 of the person, including, but not limited to, habilitation
28 plans, school records, and psychological and psychosocial
29 reports voluntarily offered for use by the alleged
30 incapacitated person. Each member of the examining committee
31 ~~must shall~~ submit a report within 15 days after appointment.

1 ~~(f)~~(e) The examination of the alleged incapacitated
2 person must include a comprehensive examination, a report of
3 which shall be filed by the examining committee as part of its
4 written report. The comprehensive examination report should be
5 an essential element, but not necessarily the only element,
6 used in making a capacity and guardianship decision. The
7 comprehensive examination must include, if indicated:

- 8 1. A physical examination;
- 9 2. A mental health examination; and
- 10 3. A functional assessment.

11
12 If any of these three aspects of the examination is not
13 indicated or cannot be accomplished for any reason, the
14 written report must explain the reasons for its omission.

15 ~~(g)~~(d) The committee's written report must include:

16 1. To the extent possible, a diagnosis, prognosis, and
17 recommended course of treatment.

18 2. An evaluation of the alleged incapacitated person's
19 ability to retain her or his rights, including, without
20 limitation, the rights to marry; vote; contract; manage or
21 dispose of property; have a driver's license; determine her or
22 his residence; consent to medical treatment; and make
23 decisions affecting her or his social environment.

24 3. The results of the comprehensive examination and
25 the committee members' assessment of information provided by
26 the attending or family physician, if any.

27 4. A description of any matters with respect to which
28 the person lacks the capacity to exercise rights, the extent
29 of that incapacity, and the factual basis for the
30 determination that the person lacks that capacity.

31

1 5. The names of all persons present during the time
2 the committee member conducted his or her examination. If a
3 person other than the person who is the subject of the
4 examination supplies answers posed to the alleged
5 incapacitated person, the report must include the response and
6 the name of the person supplying the answer.

7 ~~6.5.~~ The signature of each member of the committee and
8 the date and time each member conducted his or her
9 examination.

10 ~~(h)(e)~~ A copy of the report must be served on the
11 petitioner and on the attorney for the alleged incapacitated
12 person within 3 days after the report is filed and at least 5
13 days before the hearing on the petition.

14 (7) FEES.--

15 (a) The examining committee and any attorney appointed
16 under subsection (2) are entitled to reasonable fees to be
17 determined by the court.

18 (b) The fees awarded under paragraph (a) shall be paid
19 by the guardian from the property of the ward or, if the ward
20 is indigent, by the state. The state shall have a creditor's
21 claim against the guardianship property for any amounts paid
22 under this section. The state may file its claim within 90
23 days after the entry of an order awarding attorney ad litem
24 fees. If the state does not file its claim within the 90-day
25 period, the state is thereafter barred from asserting the
26 claim. Upon petition by the state for payment of the claim,
27 the court shall enter an order authorizing immediate payment
28 out of the property of the ward. The state shall keep a record
29 of the ~~such~~ payments.

30 (c) If the petition is dismissed, costs and attorney's
31 fees of the proceeding may be assessed against the petitioner

1 if the court finds the petition to have been filed in bad
2 faith.

3 Section 12. Present subsection (4) of section 744.341,
4 Florida Statutes, is redesignated as subsection (5) and
5 amended, and a new subsection (4) is added to that section, to
6 read:

7 744.341 Voluntary guardianship.--

8 (4) A guardian must include in the annual report filed
9 with the court a certificate from a licensed physician who
10 examined the ward not more than 90 days before the annual
11 report is filed with the court. The certificate must certify
12 that the ward is competent to understand the nature of the
13 guardianship and of the ward's authority to delegate powers to
14 the voluntary guardian.

15 (5)(4) A voluntary guardianship may be terminated by
16 the ward by filing a notice with the court that the voluntary
17 guardianship is terminated. The notice must be accompanied by
18 a certificate from a licensed physician who has examined the
19 ward not more than 30 days before the ward filed the notice
20 with the court. The physician must certify that the ward is
21 competent to understand the implications of terminating the
22 guardianship. A copy of the notice and certificate must be
23 served on all interested persons.

24 Section 13. Subsection (9) is added to section
25 774.361, Florida Statutes, to read:

26 744.361 Powers and duties of guardian.--

27 (9) A professional guardian must ensure that each of
28 the guardian's wards is personally visited by the guardian or
29 one of the guardian's professional staff at least once each
30 calendar quarter. During the personal visit, the guardian or
31 the guardian's professional staff person shall assess:

- 1 (a) The ward's physical appearance and condition;
2 (b) The appropriateness of the ward's current living
3 situation; and
4 (c) The need for any additional services and the
5 necessity for continuation of existing services, taking into
6 consideration all aspects of social, psychological,
7 educational, direct service, health, and personal care needs.

8
9 This subsection does not apply to a professional guardian who
10 has been appointed only as guardian of the property.

11 Section 14. Subsection (2) of section 744.365, Florida
12 Statutes, is amended to read:

13 744.365 Verified inventory.--

14 (2) CONTENTS.--The verified inventory must include the
15 following:

16 (a) All property of the ward, real and personal, that
17 has come into the guardian's possession or knowledge,
18 including a statement of all encumbrances, liens, and other
19 secured claims on any item, any claims against the property,
20 and any cause of action accruing to the ward and any trusts of
21 which the ward is a beneficiary;

22 (b) The location of the real and personal property in
23 sufficient detail so that it may be clearly identified or
24 located; and

25 (c) A description of all sources of income, including,
26 without limitation, social security benefits and pensions.

27 Section 15. Subsections (1) and (3) of section
28 744.367, Florida Statutes, are amended to read:

29 744.367 Duty to file annual guardianship report.--

30 (1) Unless the court requires filing on a
31 calendar-year basis, each guardian of the person shall file

1 with the court an annual guardianship plan within 90 days
2 after the last day of the anniversary month the letters of
3 guardianship were signed, and the plan must cover the coming
4 fiscal year, ending on the last day in such anniversary month.
5 If the court requires calendar-year filing, the guardianship
6 plan must be filed on or before April 1 of each year ~~within 90~~
7 ~~days after the end of the calendar year.~~

8 (3) The annual guardianship report of a guardian of
9 the property must consist of an annual accounting, and the
10 annual report of a guardian of the person ~~of an incapacitated~~
11 ~~person~~ must consist of an annual guardianship plan. The annual
12 report shall be served on the ward, unless the ward is a minor
13 ~~under the age of 14 years~~ or is totally incapacitated, and on
14 the attorney for the ward, if any. The guardian shall provide
15 a copy to any other person as the court may direct.

16 Section 16. Section 744.3675, Florida Statutes, is
17 amended to read:

18 744.3675 Annual guardianship plan.--Each guardian of
19 the person must file with the court an annual guardianship
20 plan which updates information about the condition of the
21 ward. The annual plan must specify the current needs of the
22 ward and how those needs are proposed to be met in the coming
23 year.

24 (1) Each plan for an adult ward must, if applicable,
25 include:

26 (a) Information concerning the residence of the ward,
27 including:

- 28 1. The ward's address at the time of filing the plan;
- 29 2. The name and address of each place where the ward
30 was maintained during the preceding year;
- 31 3. The length of stay of the ward at each place;

1 4. A statement of whether the current residential
2 setting is best suited for the current needs of the ward; and

3 5. Plans for ensuring during the coming year that the
4 ward is in the best residential setting to meet his or her
5 needs.

6 (b) Information concerning the medical and mental
7 health conditions ~~condition~~ and treatment and rehabilitation
8 needs of the ward, including:

9 1. A resume of any professional medical treatment
10 given to the ward during the preceding year;

11 2. The report of a physician who examined the ward no
12 more than 90 days before the beginning of the applicable
13 reporting period. ~~The Such~~ report must contain an evaluation
14 of the ward's condition and a statement of the current level
15 of capacity of the ward; and

16 3. The plan for providing ~~provision of~~ medical, mental
17 health, and rehabilitative services in the coming year.

18 (c) Information concerning the social condition of the
19 ward, including:

20 1. The social and personal services currently used
21 ~~utilized~~ by the ward;

22 2. The social skills of the ward, including a
23 statement of how well the ward communicates and maintains
24 interpersonal relationships with others; and

25 ~~3. A description of the ward's activities at~~
26 ~~communication and visitation; and~~

27 ~~3.4.~~ The social needs of the ward.

28 (2) Each plan filed by the legal guardian of a minor
29 must include:

30 (a) Information concerning the residence of the minor,
31 including:

1 1. The minor's address at the time of filing the plan;
2 and
3 2. The name and address of each place where the minor
4 lived during the preceding year.
5 (b) Information concerning the medical and mental
6 health conditions and treatment and rehabilitation needs of
7 the minor, including:
8 1. A resume of any professional medical treatment
9 given to the minor during the preceding year;
10 2. A report from the physician who examined the minor
11 no more than 180 days before the beginning of the applicable
12 reporting period which contains an evaluation of the minor's
13 physical and mental conditions; and
14 3. The plan for providing medical services in the
15 coming year.
16 (c) Information concerning the education of the minor,
17 including:
18 1. A summary of the school progress report;
19 2. The social development of the minor, including a
20 statement of how well the minor communicates and maintains
21 interpersonal relationships with others; and
22 3. The social needs of the minor.
23 ~~(3)~~⁽²⁾ Each plan for an adult ward must address the
24 issue of restoration of rights to the ward and include:
25 (a) A summary of activities during the preceding year
26 which were designed to enhance ~~increase~~ the capacity of the
27 ward;
28 (b) A statement of whether the ward can have any
29 rights restored; and
30 (c) A statement of whether restoration of any rights
31 will be sought.

1 ~~(4)(3)~~ The court, in its discretion, may require
2 reexamination of the ward by a physician at any time.

3 Section 17. Subsections (2) and (3) of section
4 744.3678, Florida Statutes, are amended to read:

5 744.3678 Annual accounting.--

6 (2) The annual accounting must include:

7 (a) A full and correct account of the receipts and
8 disbursements of all of the ward's property over which the
9 guardian has control and a statement of the ward's property on
10 hand at the end of the accounting period. This paragraph does
11 not apply to any property under the control of the guardian,
12 including any trust of which the ward is a beneficiary but
13 which is not under the control or administration of the
14 guardian.

15 (b) A copy of the annual or year-end statement of all
16 of the ward's cash accounts from each of the institutions
17 where the cash is deposited.

18 (3) The guardian must obtain a receipt, ~~or~~ canceled
19 check, or other proof of payment for all expenditures and
20 disbursements made on behalf of the ward. The guardian must
21 preserve all evidence of payment ~~the receipts and canceled~~
22 ~~checks~~, along with other substantiating papers, for a period
23 of 3 years after his or her discharge. The receipts, proof of
24 payment ~~checks~~, and substantiating papers need not be filed
25 with the court but shall be made available for inspection and
26 review at the such time and ~~in such~~ place and before such
27 persons as the court may ~~from time to time~~ order.

28 Section 18. Section 744.3679, Florida Statutes, is
29 amended to read:

30 744.3679 Simplified accounting procedures in certain
31 cases.--

1 (1) In a guardianship of property, when all assets of
2 the estate are in designated depositories under s. 69.031 and
3 the only transactions that occur in that account are interest
4 accrual, deposits from a ~~pursuant to~~ settlement, or financial
5 institution service charges, the guardian may elect to file an
6 accounting consisting of:

7 (a) The original or a certified copy of the year-end
8 statement of the ward's account from the financial
9 institution; and

10 (b) A statement by the guardian under penalty of
11 perjury that the guardian has custody and control of the
12 ward's property as shown in the year-end statement.

13 ~~(2) The clerk has no responsibility to monitor or~~
14 ~~audit the accounts and may not accept a fee for doing so.~~

15 ~~(2)(3)~~ The accounting allowed by subsection (1) is in
16 lieu of the accounting and auditing procedures under s.
17 744.3678(2) ~~ss. 744.3678 and 744.368(1)(f)~~. However, any
18 interested party may seek judicial review as provided in s.
19 744.3685.

20 ~~(3)(4)~~ The guardian need not be represented by an
21 attorney in order to file the annual accounting allowed by
22 subsection (1).

23 Section 19. Subsection (3) of section 744.368, Florida
24 Statutes, is amended to read:

25 744.368 Responsibilities of the clerk of the circuit
26 court.--

27 (3) Within 90 days after the filing of the verified
28 inventory and accountings ~~initial or annual guardianship~~
29 ~~report~~ by a guardian of the property, the clerk shall audit
30 the verified inventory and ~~or~~ the accountings ~~annual~~
31

1 ~~accounting~~. The clerk shall advise the court of the results of
2 the audit.

3 Section 20. Subsection (19) of section 744.441,
4 Florida Statutes, is amended to read:

5 744.441 Powers of guardian upon court approval.--After
6 obtaining approval of the court pursuant to a petition for
7 authorization to act, a plenary guardian of the property, or a
8 limited guardian of the property within the powers granted by
9 the order appointing the guardian or an approved annual or
10 amended guardianship report, may:

11 (19) Create or amend revocable or irrevocable trusts
12 of property of the ward's estate which may extend beyond the
13 disability or life of the ward in connection with estate,
14 gift, income, or other tax planning or in connection with
15 estate planning. The court shall retain oversight of the
16 assets transferred to a trust, unless otherwise ordered by the
17 court.

18 Section 21. Section 744.442, Florida Statutes, is
19 created to read:

20 744.442 Delegation of authority.--

21 (1) A guardian may designate a surrogate guardian to
22 exercise the powers of the guardian if the guardian is
23 unavailable to act. A person designated as a surrogate
24 guardian under this section must be a professional guardian.

25 (2)(a) A guardian must file a petition with the court
26 requesting permission to designate a surrogate guardian.

27 (b) If the court approves the designation, the order
28 must specify the name and business address of the surrogate
29 guardian, and the duration of appointment, which may not
30 exceed 30 days. The court may extend the appointment for good
31 cause shown. The surrogate guardian may exercise all powers of

1 the guardian unless limited by order of the court. The
2 surrogate guardian must file with the court an oath swearing
3 or affirming that he or she will faithfully perform the duties
4 delegated. The court may require the surrogate guardian to
5 post a bond.

6 (3) This section does not limit the responsibility of
7 the guardian to the ward and to the court. The guardian is
8 liable for the acts of the surrogate guardian. The guardian
9 may terminate the authority of the surrogate guardian by
10 filing a written notice of the termination with the court.

11 (4) The surrogate guardian is subject to the
12 jurisdiction of the court as if appointed to serve as
13 guardian.

14 Section 22. Paragraphs (c), (e), and (f) of subsection
15 (2) and subsection (4) of section 744.464, Florida Statutes,
16 are amended to read:

17 744.464 Restoration to capacity.--

18 (2) SUGGESTION OF CAPACITY.--

19 (c) The court shall immediately send notice of the
20 filing of the suggestion of capacity to the ward, the
21 guardian, the attorney for the ward, if any, ~~the state~~
22 ~~attorney~~, and any other interested persons designated by the
23 court. Formal notice must be served on the guardian.
24 Informal notice may be served on other persons. Notice need
25 not be served on the person who filed the suggestion of
26 capacity.

27 (e) If an objection is timely filed, or if the medical
28 examination suggests that full restoration is not appropriate,
29 the court shall set the matter for hearing. If the ward does
30 not have an attorney, the court shall appoint one to represent
31 the ward.

1 (f) Notice of the hearing and copies of the objections
2 and medical examination reports shall be served upon the ward,
3 the ward's attorney, the guardian, ~~the state attorney,~~ the
4 ward's next of kin, and any other interested persons as
5 directed by the court.

6 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~
7 ~~CAPACITY. Notwithstanding this section, a suggestion of~~
8 ~~capacity may not be filed within 90 days after an adjudication~~
9 ~~of incapacity or denial of restoration, unless good cause is~~
10 ~~shown.~~

11 Section 23. Section 744.511, Florida Statutes, is
12 amended to read:

13 744.511 Accounting upon removal.--A removed guardian
14 shall file with the court a true, complete, and final report
15 of his or her guardianship within 20 days after removal and
16 shall serve a copy on the successor guardian and the ward,
17 unless the ward is a minor ~~under 14 years of age~~ or has been
18 determined to be totally incapacitated.

19 Section 24. Section 744.527, Florida Statutes, is
20 amended to read:

21 744.527 Final reports and application for discharge;
22 hearing.--

23 (1) When the court terminates the guardianship,
24 according to the reasons set forth in s. 744.521 the guardian
25 shall promptly file his or her final report. If the ward has
26 died, the guardian must file a final report with the court no
27 later than 45 days after he or she has been served with
28 letters of administration or letters of curatorship. If no
29 objections are filed and if it appears that the guardian has
30 made full and complete distribution to the person entitled and
31 has otherwise faithfully discharged his or her duties, the

1 | court shall approve the final report. If objections are
2 | filed, the court shall conduct a hearing in the same manner as
3 | provided for a hearing on objections to annual guardianship
4 | reports.

5 | (2) The guardian applying for discharge may ~~is~~
6 | ~~authorized to~~ retain from the funds in his or her possession a
7 | sufficient amount to pay the final costs of administration,
8 | including guardian and attorney's fees regardless of the death
9 | of the ward, accruing between the filing of his or her final
10 | returns and the order of discharge.

11 | Section 25. Subsection (3) of section 744.528, Florida
12 | Statutes, is amended to read:

13 | 744.528 Discharge of guardian named as personal
14 | representative.--

15 | (3) Any interested person may file a notice of ~~The~~
16 | ~~court shall set~~ a hearing on any objections filed by the
17 | beneficiaries. Notice of the hearing must ~~shall~~ be served upon
18 | the guardian, beneficiaries of the ward's estate, and any
19 | other person to whom the court directs service. If a notice of
20 | hearing on the objections is not served within 90 days after
21 | filing of the objections, the objections are deemed abandoned.

22 | Section 26. Subsection (6) of section 744.708, Florida
23 | Statutes, is amended to read:

24 | 744.708 Reports and standards.--

25 | (6) A ~~The~~ public guardian shall ensure that each of
26 | the guardian's wards is personally visited ~~ward is seen by the~~
27 | public guardian or by a professional staff person of the
28 | public guardian at least once each calendar quarter ~~four times~~
29 | ~~a year~~. During this personal visit, the public guardian or the
30 | professional staff person shall assess:

31 | (a) The ward's physical appearance and condition;

1 (b) The appropriateness of the ward's current living
2 situation; and

3 (c) The need for any additional services and the
4 necessity for continuation of existing services, taking into
5 consideration all aspects of social, psychological,
6 educational, direct service, health, and personal care needs.

7 Section 27. Paragraph (a) of subsection (5) of section
8 765.101, Florida Statutes, is amended to read:

9 765.101 Definitions.--As used in this chapter:

10 (5) "Health care decision" means:

11 (a) Informed consent, refusal of consent, or
12 withdrawal of consent to any and all health care, including
13 life-prolonging procedures and mental health treatment, unless
14 otherwise stated in the advance directives.

15 Section 28. Section 28.345, Florida Statutes, is
16 amended to read:

17 28.345 Exemption from court-related fees and
18 charges.--Notwithstanding any other ~~provision of this chapter~~
19 ~~or~~ law to the contrary, judges, state attorneys, guardians ad
20 litem, public guardians, and public defenders, acting in their
21 official capacity, and state agencies, are exempt from all
22 court-related fees and charges assessed by the clerks of the
23 circuit courts.

24 Section 29. Paragraph (c) of subsection (8) of section
25 121.091, Florida Statutes, is amended to read:

26 121.091 Benefits payable under the system.--Benefits
27 may not be paid under this section unless the member has
28 terminated employment as provided in s. 121.021(39)(a) or
29 begun participation in the Deferred Retirement Option Program
30 as provided in subsection (13), and a proper application has
31 been filed in the manner prescribed by the department. The

1 | department may cancel an application for retirement benefits
2 | when the member or beneficiary fails to timely provide the
3 | information and documents required by this chapter and the
4 | department's rules. The department shall adopt rules
5 | establishing procedures for application for retirement
6 | benefits and for the cancellation of such application when the
7 | required information or documents are not received.

8 | (8) DESIGNATION OF BENEFICIARIES.--

9 | (c) Notwithstanding the member's designation of
10 | benefits to be paid through a trust to a beneficiary that is a
11 | natural person as provided in s. 121.021(46), and
12 | notwithstanding the provisions of the trust, benefits shall be
13 | paid directly to the beneficiary if the ~~such~~ person is no
14 | longer a minor or incapacitated as defined in s. 744.102(12)
15 | and (13) ~~s. 744.102(11) and (12)~~.

16 | Section 30. Subsection (1) of section 709.08, Florida
17 | Statutes, is amended to read:

18 | 709.08 Durable power of attorney.--

19 | (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
20 | power of attorney is a written power of attorney by which a
21 | principal designates another as the principal's attorney in
22 | fact. The durable power of attorney must be in writing, must
23 | be executed with the same formalities required for the
24 | conveyance of real property by Florida law, and must contain
25 | the words: "This durable power of attorney is not affected by
26 | subsequent incapacity of the principal except as provided in
27 | s. 709.08, Florida Statutes"; or similar words that show the
28 | principal's intent that the authority conferred is exercisable
29 | notwithstanding the principal's subsequent incapacity, except
30 | as otherwise provided by this section. The durable power of
31 | attorney is exercisable as of the date of execution; however,

1 | if the durable power of attorney is conditioned upon the
2 | principal's lack of capacity to manage property as defined in
3 | s. 744.102(12)(a) ~~s. 744.102(11)(a)~~, the durable power of
4 | attorney is exercisable upon the delivery of affidavits in
5 | paragraphs (4)(c) and (d) to the third party.

6 | Section 31. Subsection (3) of section 744.1085,
7 | Florida Statutes, is amended to read:

8 | 744.1085 Regulation of professional guardians;
9 | application; bond required; educational requirements.--

10 | (3) Each professional guardian defined in s.
11 | 744.102(17) ~~s. 744.102(16)~~ and public guardian must receive a
12 | minimum of 40 hours of instruction and training. Each
13 | professional guardian must receive a minimum of 16 hours of
14 | continuing education every 2 calendar years after the year in
15 | which the initial 40-hour educational requirement is met. The
16 | instruction and education must be completed through a course
17 | approved or offered by the Statewide Public Guardianship
18 | Office. The expenses incurred to satisfy the educational
19 | requirements prescribed in this section may not be paid with
20 | the assets of any ward. This subsection does not apply to any
21 | attorney who is licensed to practice law in this state.

22 | Section 32. For the purpose of incorporating the
23 | amendment made by this act to section 744.3215, Florida
24 | Statutes, in a reference thereto, subsection (4) of section
25 | 117.107, Florida Statutes, is reenacted to read:

26 | 117.107 Prohibited acts.--

27 | (4) A notary public may not take the acknowledgment of
28 | or administer an oath to a person whom the notary public
29 | actually knows to have been adjudicated mentally incapacitated
30 | by a court of competent jurisdiction, where the acknowledgment
31 | or oath necessitates the exercise of a right that has been

1 removed pursuant to s. 744.3215(2) or (3), and where the
2 person has not been restored to capacity as a matter of
3 record.

4 Section 33. Subsection (13) of section 318.18, Florida
5 Statutes, is amended to read:

6 318.18 Amount of civil penalties.--The penalties
7 required for a noncriminal disposition pursuant to s. 318.14
8 are as follows:

9 (13) In addition to any penalties imposed for
10 noncriminal traffic infractions under ~~pursuant to~~ this chapter
11 or imposed for criminal violations listed in s. 318.17, a
12 board of county commissioners or any unit of local government
13 which is consolidated as provided by s. 9, Art. VIII of the
14 State Constitution of 1885, as preserved by s. 6(e), Art. VIII
15 of the Constitution of 1968:

16 (a)1. May impose by ordinance a surcharge of up to \$15
17 for any infraction or violation to fund state court
18 facilities. The court may ~~shall~~ not waive this surcharge.

19 2. May impose an additional \$15 surcharge to fund the
20 county's participation in the public guardianship program
21 under chapter 744. Imposition of this surcharge must be by
22 vote of two-thirds of the board of county commissioners or
23 after a referendum approved by the electors of the county.
24 Before imposing the surcharge, the county commission must
25 demonstrate that available revenue sources are insufficient to
26 fund such participation. The court may not waive this
27 surcharge.

28 (b) That imposed increased fees or service charges by
29 ordinance under s. 28.2401, s. 28.241, or s. 34.041 for the
30 purpose of securing payment of the principal and interest on
31 bonds issued by the county before July 1, 2003, to finance

1 state court facilities, may impose by ordinance a surcharge
2 for any infraction or violation for the exclusive purpose of
3 securing payment of the principal and interest on bonds issued
4 by the county before July 1, 2003, to fund state court
5 facilities until the date of stated maturity. The court may
6 ~~shall~~ not waive this surcharge. ~~The Such~~ surcharge may not
7 exceed an amount per violation calculated as the quotient of
8 the maximum annual payment of the principal and interest on
9 the bonds as of July 1, 2003, divided by the number of traffic
10 citations for county fiscal year 2002-2003 certified as paid
11 by the clerk of the court of the county. ~~The Such~~ quotient
12 shall be rounded up to the next highest dollar amount. The
13 bonds may be refunded only if savings will be realized on
14 payments of debt service and the refunding bonds are scheduled
15 to mature on the same date or before the bonds being refunded.

16
17 A county may not impose ~~both~~ of the surcharges authorized
18 under both paragraphs (a) and (b) concurrently.

19 Section 34. Section 938.065, Florida Statutes, is
20 created to read:

21 938.065 Additional cost for public guardianship
22 programs.--

23 (1) In addition to any fine prescribed by law for any
24 misdemeanor offense, there is assessed as a court cost an
25 additional surcharge of \$18 on each fine, which shall be
26 imposed by each county and circuit court and collected by the
27 clerk of the court together with the fine.

28 (2) The clerk of the court shall collect and forward,
29 on a monthly basis, all costs assessed under this section,
30 less \$3 per assessment as a service charge to be retained by
31 the clerk, to the Department of Revenue for deposit into the

1 General Revenue Fund. The funds collected shall be used
2 exclusively to fund public guardianship programs in this
3 state.

4 Section 35. This act shall take effect July 1, 2005.
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SENATE SUMMARY

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2
3 Revises various provisions of guardianship law. Provides
4 that in the event of death, the surviving parent is the
5 sole natural guardian of the minor. Prohibits a natural
6 guardian from using the property of the ward for the
7 guardian's benefit without a court order. Permits a court
8 to appoint a guardian ad litem to represent a minor's
9 interest in certain claims that exceed a specified
10 amount. Requires a court to appoint a guardian ad litem
11 to represent a minor's interest in certain claims that
12 exceed a specified amount. Requires a court to award
13 reasonable fees and costs to the guardian ad litem.
14 Increases the time an emergency temporary guardian may
15 serve from 60 to 90 days. Specifies the persons who may
16 file a petition for a standby guardian. Requires that
17 notice of hearing be served on the ward's next of kin.
18 Clarifies when a standby guardian may assume the duties
19 of guardian. Requires each standby guardian to submit to
20 credit and criminal background checks. Reduces the time
21 in which a guardian must complete the education courses
22 from 1 year to 4 months. Requires the court to appoint an
23 attorney from a specified registry. Requires appointed
24 attorneys to complete certain training programs. Provides
25 that a member of the examining committee may not be
26 related to or associated with certain persons. Requires
27 each member of an examining committee to file an
28 affidavit stating that he or she has completed the
29 mandatory training. Requires the voluntary guardian to
30 include certain information in the annual report and the
31 notice to terminate a voluntary guardianship. Requires
that the verified inventory include information on any
trust to which a ward is a beneficiary. Requires that the
annual report of the guardian be filed on or before April
1 of each year. Provides for an annual guardianship plan
for wards who are minors. Requires certain documentation
for the annual accounting. Requires that the verified
inventory and the accountings be audited within a
specified time period. Removes the state attorney from
the list of persons to be served a notice of a hearing on
restoration of capacity. Provides that a ward who is a
minor need not be served with the final report of a
removed guardian. Provides that final reports for a
deceased ward be filed at a specified time. Exempts a
public guardian from paying court-related fees and
charges. Authorizes a county to impose a surcharge on
certain civil penalties to fund local participation in
the public guardianship program. Prescribes prerequisites
for imposing the surcharge and a limit on the surcharge.
Requires that a surcharge of \$18 be assessed against all
misdemeanor offenses. Provides that the clerk of the
court may retain a service charge. Directs that the funds
collected be used to fund public guardianship programs.
(See bill for details.)