

By the Committee on Children, Families, and Elder Affairs; and
Senator Detert

586-01712-15

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1 A bill to be entitled
2 An act relating to guardians; amending s. 39.6251,
3 F.S.; requiring the court at the permanency review
4 hearing to review the necessity of the guardianship
5 and whether restoration of guardianship proceedings
6 are needed when the child reaches a certain age under
7 certain circumstances; amending s. 39.701, F.S.;
8 requiring that, for a child meeting certain
9 requirements, the updated case plan be developed in a
10 face-to-face conference with specified persons
11 present; requiring the Department of Children and
12 Families to take specified actions at the judicial
13 review hearing if the court makes certain
14 determinations; requiring the department to provide
15 documentation and information to a petitioner under
16 certain circumstances; requiring certain proceedings
17 to be conducted separately; expanding the
18 circumstances under which a court, after making
19 certain findings, may issue an order directing the
20 department to show cause; amending s. 393.12, F.S.;
21 providing that the court with proper jurisdiction over
22 probate matters has jurisdiction if a specified
23 petition is filed; requiring the provision of due
24 process rights for a minor; requiring the issuance of
25 the order of appointment of guardian advocate upon the
26 minor turning 18 years of age or as soon thereafter as
27 possible; amending s. 744.301, F.S.; providing that
28 parents are the joint natural guardians of their
29 children unless their parental rights have been

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30 terminated; authorizing the parents to act as natural
31 guardians of their child under certain circumstances;
32 providing an exception; amending s. 744.3021, F.S.;
33 providing an exception to the appointment of guardians
34 for a minor; specifying that the court with proper
35 jurisdiction over probate matters has jurisdiction
36 over certain proceedings if a specified petition is
37 filed; requiring the provision of due process rights
38 for an alleged incapacitated minor; providing an
39 effective date.

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41 Be It Enacted by the Legislature of the State of Florida:

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43 Section 1. Subsection (8) of section 39.6251, Florida
44 Statutes, is amended to read:

45 39.6251 Continuing care for young adults.—

46 (8) During the time that a young adult is in care, the
47 court shall maintain jurisdiction to ensure that the department
48 and the lead agencies are providing services and coordinate
49 with, and maintain oversight of, other agencies involved in
50 implementing the young adult's case plan, individual education
51 plan, and transition plan. The court shall review the status of
52 the young adult at least every 6 months and hold a permanency
53 review hearing at least annually. If the young adult has been
54 appointed a guardian under chapter 744 or a guardian advocate
55 under s. 393.12, the court shall review at the permanency review
56 hearing the necessity of continuing the guardianship and whether
57 restoration of guardianship proceedings are needed when the
58 child reaches 22 years of age. The court may appoint a guardian

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59 ad litem or continue the appointment of a guardian ad litem with
60 the young adult's consent. The young adult or any other party to
61 the dependency case may request an additional hearing or review.

62 Section 2. Paragraphs (b) and (c) of subsection (3) of
63 section 39.701, Florida Statutes, are amended to read:

64 39.701 Judicial review.—

65 (3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

66 (b) At the first judicial review hearing held subsequent to
67 the child's 17th birthday, the department shall provide the
68 court with an updated case plan that includes specific
69 information related to the independent living skills that the
70 child has acquired since the child's 13th birthday, or since the
71 date the child came into foster care, whichever came later.

72 1. For any child that may meet the requirements for
73 appointment of a guardian pursuant to chapter 744 or a guardian
74 advocate pursuant to s. 393.12, the updated case plan must be
75 developed in a face-to-face conference with the child, if
76 appropriate; the child's attorney; any court-appointed guardian
77 ad litem; the temporary custodian of the child; and the parent,
78 if the parent's rights have not been terminated.

79 2. At the judicial review hearing, if the court determines
80 pursuant to the procedures and requirements of chapter 744 and
81 the Florida Probate Rules that there is a good faith basis to
82 believe the child qualifies for appointment of a guardian or a
83 guardian advocate and that no less restrictive decisionmaking
84 assistance will meet the child's needs:

85 a. The department shall complete a multidisciplinary report
86 that must include, but is not limited to, a psychosocial
87 evaluation and educational report if such a report has not been

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88 completed within the previous 2 years.

89 b. The department shall identify one or more individuals
90 who are willing to serve as the guardian advocate pursuant to s.
91 393.12 or as the plenary guardian or limited guardian pursuant
92 to chapter 744 and the Florida Probate Rules. Any other
93 interested parties or participants may make efforts to identify
94 such a guardian advocate or plenary guardian or limited
95 guardian. A child's biological or adoptive family members,
96 including a child's parents if the parents' rights have not been
97 terminated, may not be considered for service as the plenary
98 guardian or limited guardian unless the court enters a written
99 order finding that such an appointment is in the child's best
100 interests.

101 c. Proceedings shall be initiated within 180 days after the
102 child's 17th birthday for the appointment of a guardian advocate
103 or plenary guardian or limited guardian for the child in the
104 court with proper jurisdiction over probate matters according to
105 the local rules of judicial administration and the procedures
106 and requirements of chapter 744 and the Florida Probate Rules.

107 3. In the event another interested party or participant
108 initiates proceedings for the appointment of a guardian advocate
109 or plenary guardian or limited guardian for the child, the
110 department shall provide all necessary documentation and
111 information to the petitioner to complete a petition under
112 chapter 393 or chapter 744 within 45 days after the first
113 judicial review hearing after the child's 17th birthday.

114 4. Any proceedings for appointment of a guardian advocate
115 or a determination of incapacity and the appointment of a
116 guardian must be conducted in a separate proceeding in the court

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117 with proper jurisdiction over probate matters according to local
118 rules of judicial administration and the procedures and
119 requirements of chapter 744 and the Florida Probate Rules.

120 (c) If the court finds at the judicial review hearing that
121 the department has not met its obligations to the child as
122 stated in this part, in the written case plan, or in the
123 provision of independent living services, the court may issue an
124 order directing the department to show cause as to why it has
125 not done so. If the department cannot justify its noncompliance,
126 the court may give the department 30 days within which to
127 comply. If the department fails to comply within 30 days, the
128 court may hold the department in contempt.

129 Section 3. Paragraph (c) is added to subsection (2) of
130 section 393.12, Florida Statutes, to read:

131 393.12 Capacity; appointment of guardian advocate.—

132 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

133 (c) If a petition is filed pursuant to this section
134 requesting appointment of a guardian advocate for a minor who is
135 the subject of any proceeding under chapter 39, the court with
136 proper jurisdiction over probate matters according to local
137 rules of judicial administration and the Florida Probate Rules
138 shall have jurisdiction over the proceedings pursuant to this
139 section when the minor reaches the age of 17 years and 6 months
140 or anytime thereafter. The minor shall be provided all the due
141 process rights conferred upon an alleged developmentally
142 disabled adult pursuant to this chapter. The order of
143 appointment of guardian advocate under this section shall be
144 issued upon the minor's 18th birthday or as soon thereafter as
145 possible.

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146 Section 4. Subsection (1) of section 744.301, Florida
147 Statutes, is amended to read:

148 744.301 Natural guardians.—

149 (1) The parents jointly are the natural guardians of their
150 own children and of their adopted children, during minority,
151 unless the parent's parental rights have been terminated
152 pursuant to chapter 39. If a child is the subject of any
153 proceeding under chapter 39, the parents may act as natural
154 guardians under this section unless the dependency or probate
155 court finds that it is not in the child's best interest. If one
156 parent dies, the surviving parent remains the sole natural
157 guardian even if he or she remarries. If the marriage between
158 the parents is dissolved, the natural guardianship belongs to
159 the parent to whom sole parental responsibility has been
160 granted, or if the parents have been granted shared parental
161 responsibility, both continue as natural guardians. If the
162 marriage is dissolved and neither parent is given parental
163 responsibility for the child, neither may act as natural
164 guardian of the child. The mother of a child born out of wedlock
165 is the natural guardian of the child and is entitled to primary
166 residential care and custody of the child unless the court
167 enters an order stating otherwise.

168 Section 5. Subsection (1) of section 744.3021, Florida
169 Statutes, is amended, and subsection (4) is added to that
170 section, to read:

171 744.3021 Guardians of minors.—

172 (1) Except as provided in subsection (4), upon petition of
173 a parent, brother, sister, next of kin, or other person
174 interested in the welfare of a minor, a guardian for a minor may

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175 be appointed by the court without the necessity of adjudication
176 pursuant to s. 744.331. A guardian appointed for a minor,
177 whether of the person or property, has the authority of a
178 plenary guardian.

179 (4) If a petition is filed pursuant to this section
180 requesting appointment of a guardian for a minor that is the
181 subject of any proceeding under chapter 39 and who is 17 years
182 and 6 months of age or older, the court with proper jurisdiction
183 over probate matters according to local rules of judicial
184 administration and the procedures and requirements of this
185 chapter and the Florida Probate Rules shall have jurisdiction
186 over the proceedings under s. 744.331. The alleged incapacitated
187 minor under this subsection shall be provided all the due
188 process rights conferred upon an alleged incapacitated adult
189 pursuant to this chapter and the Florida Probate Rules. The
190 order of adjudication under s. 744.331 and the letters of
191 limited guardianship or plenary guardianship may be issued upon
192 the minor's 18th birthday or as soon thereafter as possible.

193 Section 6. This act shall take effect July 1, 2015.