

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 172

INTRODUCER: Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senators Passidomo and Mayfield

SUBJECT: Guardianship

DATE: April 6, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.	Stallard	Cibula	JU	Fav/CS
3.	Crosier	Phelps	RC	Favorable

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 172 revises several aspects of Florida's guardianship statutes relating to the determination of a person's incapacity, a guardian's annual report on the incapacitated person over whom he or she has responsibility, what findings a court must make to allow a guardian to initiate a ward's divorce, and how much a guardian may spend on a ward's funeral and related expenses.

The bill has an effective date of July 1, 2017, and is not expected to have a fiscal impact.

**II. Present Situation:**

**Procedures to determine incapacity**

Section 744.331, F.S., provides the process whereby a petition to determine incapacity is filed and provided and read to the alleged incapacitated person.<sup>1</sup> Notice of the filing of a petition to determine incapacity must be served on certain individuals.<sup>2</sup> The notice must also contain the time and place of the hearing on the petition to determine incapacity, that an attorney has been

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<sup>1</sup> Section 744.331(1), F.S.

<sup>2</sup> *Id.*

appointed and, if the person is determine incapable of exercising certain rights, a guardian will be appointed to exercise those rights on his or her behalf.<sup>3</sup>

Within 5 days after a petition to determine incapacity is filed the court appoints a 3 member examining committee.<sup>4</sup> Each member of the examining committee must examine the person, determine the alleged incapacitated person's ability to exercise certain rights as specified in statute and submit a report within 15 days after appointment.<sup>5</sup> If two of the three examining committee members conclude that the person is incapacitated then a hearing is scheduled on the petition.<sup>6</sup> A copy of each examining committee member's report must be served on the petitioner and the attorney for the alleged incapacitated person within 3 days after filing and at least 5 days before a hearing is held on the petition.<sup>7</sup>

When the court appoints the examining committee, the court also sets the adjudicatory hearing on the petition for not more than 14 days after the filing of the examining committee reports, unless good cause is shown.<sup>8</sup>

### **Filing of annual guardianship report**

The court, if it does not require a calendar-year filing, requires the guardian to file annual guardianship plan at least 60 days but no more than 90 days before the last day of the anniversary month that the letters of guardianship were signed. The plan must cover the coming fiscal year. If the court requires a calendar-year guardianship plan be filed, the plan must be filed after September 1 but no later than December 1 of the current year.

### **Procedures for extraordinary authority**

Before the court allows a guardian to exercise extraordinary authority over certain rights of the ward as specified in s. 744.3215(4), F.S., the court must follow certain procedures.<sup>9</sup> To allow a guardian to initiate a petition for dissolution of marriage for a ward, the court must find that the ward's spouse has consented to the dissolution.<sup>10</sup> Currently, the ward's spouse has the right to absolutely bar the initiation of dissolution of marriage proceedings by either the ward or the ward's guardian.

### **Powers of the guardian upon court approval**

The guardian must file a petition for the court's authorization to perform certain duties, including but not limited to paying reasonable funeral, interment, and grave marker expenses for the ward from the ward's estate, up to a maximum of \$6,000.<sup>11</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> Section 744.331(3)(a), F.S.

<sup>5</sup> Section 744.331(3)(e), F.S.

<sup>6</sup> Section 744.331(4), F.S.

<sup>7</sup> Section 744.331(3)(h), F.S.

<sup>8</sup> Section 744.331(5)(a), F.S.

<sup>9</sup> Section 744.3725, F.S.

<sup>10</sup> Section 744.3725(6), F.S.

<sup>11</sup> Section 744.441(16), F.S.

### III. Effect of Proposed Changes:

**Section 1** amends s. 744.331(3), F.S., to require the clerk of court to serve the examining committee reports on the petitioner and the attorney for the alleged incapacitated person within 3 days of receiving the reports. The timeframe within which the examining committee reports must be received by counsel for the petitioner and the attorney for the alleged incapacitated person is increased from 5 days to 10 days. The hearing on the petition may be continued if service of the reports is not timely.

This bill creates s. 744.331(3)(i), F.S., to allow the petitioner and the alleged incapacitated person to object to the introduction into evidence of all or any portion of the examining committee members' reports by filing and serving a written objection on the other party no later than 5 days before the adjudicatory hearing. If no objection is made then the examining committees' reports are admissible into evidence without further proof.

This section also provides that the adjudicatory hearing on the petition must be conducted at least 10 days, but no more than 30 days, after the last filed report of the examining committee members; however, this time restriction may be waived.

**Section 2** amends s. 744.367(1), F.S., to require a guardian file an annual guardianship plan within 90 days after the last day of the anniversary month that the letters of guardianship were signed unless the court requires a calendar-year filing. If the court requires a calendar-year filing, the guardianship plan must be filed on or before April 1 of each year. The latest guardianship plan filed with the court will remain in effect until the court approves the subsequent plan.

**Section 3** amends s. 744.3725, F.S. to remove the prohibition of the court granting the guardian the power to initiate a dissolution of marriage proceeding for a ward without the consent of the ward's spouse. However, initiating a dissolution of marriage proceeding remains an extraordinary remedy requiring the court's approval.

**Section 4** amends s. 744.441(16), F.S., to remove the statutory cap of \$6,000 that may be used by the guardian to pay for reasonable funeral, interment, and grave marker expenses from the ward's estate. The reasonable amount for funeral costs of the ward will be determined by the court on a case by case basis.

**Section 5** reenacts s. 744.3215(4), F.S., to incorporate the amendment made by this act to s. 744.3725, F.S.

**Section 6** provides an effective date for the bill of July 1, 2017.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

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:

The bill allows guardians, with court approval, to spend more than \$6,000 on a ward's funeral, interment, and grave marker expenses.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 744.331, 744.3725, 744.441, 744.3215, and 744.367.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Judiciary on March 14, 2017:**

The bill required the clerk of the court to serve the examining committee's reports on the petitioner's attorney and the attorney for the alleged incapacitated person at least 10 days before the adjudicatory hearing. Under the committee substitute, the service must be on the petitioner, not his or her attorney. Also, if the reports are not complete by 10 days before the hearing, they no longer need to be served by that deadline. Nonetheless, each side is expressly authorized to move for a continuance if this service deadline is missed.

Regarding the admission of these reports into evidence at the hearing, the committee substitute no longer expressly restricts the authority to object to only the alleged incapacitated person and the petitioner. Lastly, though the adjudicatory hearing still may not occur until 10 days after the last committee report is filed, the committee substitute allows for waiver of this restriction.

**CS by Children, Families, and Elder Affairs on February 6, 2017:**

The amendment provides clarification that the annual guardianship plan is to be filed with the court within 90 days after the last day of the anniversary month that the letters of guardianship were signed unless the court requires calendar-year filing. If the court requires a calendar-year filing the guardianship plan is to be filed before April 1 of each year. The last annual guardianship plan approved by the court will remain in effect until the court approves the subsequent plan.

**B. Amendments:**

None.