

1 A bill to be entitled
2 An act relating to guardianship data transparency;
3 amending s. 744.2001, F.S.; authorizing a monitoring
4 tool to include a financial audit under certain
5 circumstances; creating s. 744.20012, F.S.; creating
6 the Guardianship Data Commission; providing the
7 purpose of the commission; requiring the Department of
8 Elderly Affairs to provide administrative and staff
9 support to the commission; providing for the
10 composition and chair of the commission; providing
11 meeting requirements; providing duties; requiring an
12 annual report to the Governor and Legislature;
13 authorizing the commission to contract or consult with
14 third parties; creating s. 744.2112, F.S.; requiring
15 the department to collect, maintain, and update
16 certain information when a guardianship case is
17 opened; requiring the department to make publicly
18 accessible on the department's website certain
19 information relating to professional guardians;
20 requiring the department to create and maintain a
21 real-time statewide dashboard on the department's
22 website and include certain information on the
23 dashboard, while maintaining certain confidentiality;
24 requiring the department to adopt rules; amending ss.
25 744.362 and 744.367, F.S.; requiring guardians to

26 submit certain information to the clerk of the circuit
 27 court when filing certain reports; amending s.
 28 744.368, F.S.; providing additional responsibilities
 29 of the clerk of the circuit court; amending s.
 30 744.3701, F.S.; authorizing the clerk of the circuit
 31 court to disclose certain confidential information to
 32 the department and the Office of Public and
 33 Professional Guardians; providing that information
 34 obtained from the clerk remains exempt or confidential
 35 and exempt; providing an effective date.

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

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 39 Section 1. Paragraph (a) of subsection (3) of section
 40 744.2001, Florida Statutes, is amended to read:

41 744.2001 Office of Public and Professional Guardians.—
 42 There is created the Office of Public and Professional Guardians
 43 within the Department of Elderly Affairs.

44 (3) The executive director's oversight responsibilities of
 45 professional guardians ~~must be finalized by October 1, 2016, and~~
 46 shall include, but are not limited to:

47 (a) Developing and implementing a monitoring tool to
 48 ensure compliance of professional guardians with the standards
 49 of practice established by the Office of Public and Professional
 50 Guardians. This monitoring tool may not include a financial

51 audit as required by the clerk of the circuit court under s.
52 744.368, unless the monitoring tool is primarily used by the
53 clerk of the circuit court for auditing and reviewing purposes
54 and the Department of Elderly Affairs collects the data derived
55 by the monitoring tool in compliance with s. 744.2112.

56 Section 2. Section 744.20012, Florida Statutes, is created
57 to read:

58 744.20012 Guardianship Data Commission.—

59 (1) The Guardianship Data Commission, a commission as
60 defined in s. 20.03(10), is created within the Department of
61 Elderly Affairs to facilitate the collection of reliable and
62 consistent guardianship data at the local and state levels, to
63 identify barriers or deficiencies in the collection of such
64 data, and to recommend changes to existing laws, rules, and
65 policies in order to implement the commission's recommendations.
66 The Department of Elderly Affairs shall provide administrative
67 and staff support services for the commission. Except as
68 otherwise provided in this section, the commission shall operate
69 in a manner consistent with s. 20.052.

70 (2) The commission shall be composed of the following
71 members, appointed by the Secretary of Elderly Affairs:

72 (a) A circuit court judge.

73 (b) A clerk of court.

74 (c) The administrative coordinator of the Statewide
75 Investigation Alliance.

- 76 (d) A member in good standing of The Florida Bar.
- 77 (e) A professional guardian registered under s. 744.2002.
- 78 (f) A public guardian appointed by or contracted with the
 79 executive director of the Office of Public and Professional
 80 Guardians.
- 81 (g) A child and family advocate.
- 82 (h) A representative from Disability Rights Florida or the
 83 Florida Statewide Advocacy Council.
- 84 (i) A member who has a career in academia with an
 85 expertise in statistics.
- 86 (j) A member representing the news media.
- 87 (3) The executive director of the Office of Public and
 88 Professional Guardians is the chair of the commission, but is
 89 not a voting member of the commission.
- 90 (4) The commission must meet at least twice per year.
- 91 (5) The commission shall develop data elements and
 92 definitions to ensure uniformity and consistency of guardianship
 93 data collection throughout the state. The commission shall make
 94 recommendations to the Department of Elderly Affairs for data
 95 collection requirements.
- 96 (6) By December 1 of each year, the commission shall
 97 submit a report to the Governor, the President of the Senate,
 98 and the Speaker of the House of Representatives on the actions
 99 of the commission relative to its prescribed duties and any
 100 recommendations for improvements to data collection of

101 guardianship information.

102 (7) The commission may contract or consult with
 103 appropriate third parties as needed in the discharge of its
 104 duties.

105 Section 3. Section 744.2112, Florida Statutes, is created
 106 to read:

107 744.2112 Guardianship data collection and transparency.-

108 (1) DATA COLLECTION.-When a petition to determine
 109 incapacity is filed in a circuit court of the state, the
 110 Department of Elderly Affairs shall collect and maintain the
 111 following information and update such information as
 112 appropriate:

- 113 (a) The type of guardianship case.
- 114 (b) The current case status.
- 115 (c) Once a case is closed, the reason for its closure.
- 116 (d) The following information on the alleged incapacitated
 117 person:

- 118 1. Legal name.
- 119 2. Date of birth.
- 120 3. Residential and mailing addresses.
- 121 4. Race and biological sex assigned at birth.
- 122 5. Residential status.
- 123 6. Marital status.
- 124 7. Indigent status.
- 125 8. The name and Florida Bar number of the attorney for the

126 | alleged incapacitated person.

127 | 9. Date of the death of the alleged incapacitated person,

128 | if applicable.

129 | (e) The following information on the appointed guardian:

130 | 1. Legal name.

131 | 2. Residential and mailing addresses.

132 | 3. The guardian's relationship to the ward.

133 | 4. The name of the representative payee.

134 | 5. The name and Florida Bar number of the attorney for the

135 | guardian, if applicable, and whether the attorney for the

136 | guardian withdrew from the case.

137 | (f) The date and type of initial pleading, the name of the

138 | petitioner, and the reason the petitioner believes the alleged

139 | incapacitated person is incapacitated.

140 | (g) A copy of the court's order determining incapacity.

141 | (h) A copy of the letters of guardianship.

142 | (i) Whether the ward executed an advance directive, a

143 | power of attorney, or a trust instrument before incapacity. If

144 | so, what powers are retained by the surrogate guardian, agent,

145 | or trustee and what powers are given to the guardian.

146 | (j) If the guardian is not a professional guardian,

147 | whether the guardian completed the education requirements under

148 | s. 744.3145 or whether the court waived such requirements.

149 | (k) Whether the guardian has undergone a credit history

150 | investigation and level 2 background screening as required under

151 s. 744.3135 or whether the court waived such requirements.

152 (2) PROFESSIONAL GUARDIAN TRANSPARENCY.—The Department of
 153 Elderly Affairs must make the following information about
 154 professional guardians publicly accessible on the department's
 155 website:

156 (a) Legal name.

157 (b) Registration number and year the professional guardian
 158 first registered.

159 (c) Eligibility status to be a professional guardian.

160 (d) Mailing address.

161 (e) E-mail address.

162 (f) Counties in which the professional guardian is
 163 registered to practice.

164 (g) Education.

165 (h) Agency or firm name.

166 (i) Any complaints against the professional guardian that
 167 have been substantiated by the Statewide Investigation Alliance.

168 (j) The professional guardian's 10-year discipline
 169 history.

170 (3) (a) GUARDIANSHIP DASHBOARD.—The Department of Elderly
 171 Affairs must create and maintain a real-time statewide dashboard
 172 that is available for viewing by the public on the department's
 173 website that provides the following information, while
 174 maintaining the confidentiality required under ss. 744.21031 and
 175 744.2111:

- 176 1. The number of open, active, and ongoing guardianship
177 cases in the state.
- 178 2. The number of guardianship cases closed in the
179 preceding fiscal year.
- 180 3. The number of guardianship cases opened in the
181 preceding fiscal year.
- 182 4. The percentage of cases with a nonprofessional guardian
183 or a family member acting as the guardian.
- 184 5. The average age of an adult ward.
- 185 6. The percentage of cases in which there is a guardian of
186 the person but not a guardian of the property.
- 187 7. The percentage of cases that involve a plenary
188 guardian.
- 189 8. The percentage of adult wards who have had their rights
190 restored.
- 191 9. The percentage of cases that have been closed due to
192 the death of the ward.
- 193 10. The percentage of cases in which the petitioner who
194 filed the petition alleging incapacity was a family member of
195 the ward.
- 196 11. The percentage of cases in which there were
197 allegations of exploitation by a family member before the
198 appointment of a guardian.
- 199 12. The number of legally sufficient complaints about the
200 conduct of professional guardians which are investigated by the

201 Statewide Investigation Alliance.

202 13. The percentage of substantiated complaints and the
 203 number of unsubstantiated complaints submitted to the Statewide
 204 Investigation Alliance.

205 14. The primary deficiencies of professional guardians
 206 alleged in the complaints submitted to the Statewide
 207 Investigation Alliance, broken down by subject matter.

208 15. The number and type of disciplinary actions taken
 209 against a professional guardian.

210 (b) The Guardianship Data Commission may require
 211 additional information be reported on the dashboard.

212 (4) RULEMAKING.—The Department of Elderly Affairs shall
 213 adopt rules to implement and administer this section.

214 Section 4. Subsection (3) is added to section 744.362,
 215 Florida Statutes, to read:

216 744.362 Initial guardianship report.—

217 (3) When a guardian files an initial guardianship report
 218 with the court, the guardian must also submit to the clerk of
 219 the circuit court the information required under s. 744.2112 in
 220 an electronic format approved by the Department of Elderly
 221 Affairs.

222 Section 5. Subsection (7) is added to section 744.367,
 223 Florida Statutes, to read:

224 744.367 Duty to file annual guardianship report.—

225 (7) When a guardian files an annual guardianship report

226 with the court, the guardian must also submit to the clerk of
227 the circuit court the information required under s. 744.2112 in
228 an electronic format approved by the Department of Elderly
229 Affairs.

230 Section 6. Subsection (8) is added to section 744.368,
231 Florida Statutes, to read:

232 744.368 Responsibilities of the clerk of the circuit
233 court.-

234 (8)(a) The clerk is responsible for ensuring that the
235 guardian has submitted to the clerk's office the information
236 required under s. 744.2112 in an electronic format approved by
237 the Department of Elderly Affairs.

238 (b) Once the clerk receives the information required under
239 s. 744.2112 from a guardian, he or she must submit the
240 information to the Department of Elderly Affairs in an
241 electronic format approved by the department.

242 Section 7. Subsection (5) is added to section 744.3701,
243 Florida Statutes, to read:

244 744.3701 Confidentiality.-

245 (5) The clerk may disclose confidential information to the
246 Department of Elderly Affairs and the Office of Public and
247 Professional Guardians to the extent required under s.
248 744.2112(1). Any information obtained by the Department of
249 Elderly Affairs or the Office of Public and Professional
250 Guardians from the clerk which is confidential and exempt from

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251 | s. 119.07(1) or s. 24(a), Art. I of the State Constitution shall
252 | retain its confidential and exempt status.

253 | Section 8. This act shall take effect July 1, 2022.