

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1710

INTRODUCER: Rules Committee; Children, Families, and Elder Affairs Committee; and Senator Bradley and others

SUBJECT: Guardianship

DATE: March 2, 2022

REVISED: 2/28/22

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Gerbrandt</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/1 Amendment</u>
3.	<u>Delia</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1710 requires the Florida Clerks of Court Operations Corporation (the CCOC) to establish two statewide databases of guardianship information, one publicly searchable database and webpage intended to increase public transparency and a second that is accessible to judges and their direct staff with the goal of increasing judicial oversight in guardianship matters.

Additionally, the bill requires the Department of Elder Affairs (DOEA) to create a publicly accessible webpage that contains specified guardian information, including disciplinary actions taken against a professional guardian.

The bill provides a number of provisions related to the CCOC databases, including:

- Requiring the CCOC, on or after July 1, 2023, to create a limited access statewide database for the judiciary to increase judicial oversight and a publicly searchable website and database to increase transparency with the public.
- Requiring the judicial oversight database to be accessible only by the judiciary and their direct staff to perform court personnel's duties.
- Providing an enumerated list of data elements that must, at a minimum, be included and list of searchable elements that must, at a minimum, be included in the judicial oversight database.
- Requiring the COCC, on or after July 1, 2023, to also create a publicly accessible and searchable webpage that contains specified guardian information.

- Requiring the CCOC to generate and publish monthly reports of statistical data and generate other reports upon request by certain entities.
- Requiring the CCOC to work with stakeholders to develop proposed lists of data elements for inclusion in the judicial oversight and publicly searchable databases and provide the lists to the Governor and Legislature by January 1, 2023.

Further, the bill requires the OPPAGA to conduct a comparative analysis and to study trends in the use of Florida’s guardianship system and provide an annual report to the Governor and the Legislature beginning in 2024 through 2027.

The bill is anticipated to have a significant negative fiscal impact on the CCOC and the clerks of court due to the cost of creating and maintaining the database and guardian registration profiles. Additionally, the bill has a significant negative fiscal impact on the DOEA related to the transmission of data to the CCOC and clerks of court, and from publishing professional guardian profiles on their website. The bill provides specific appropriations to the DOEA and the Justice Administrative Commission for the CCOC. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Guardianship

When an individual is unable to make legal decisions regarding his or her person or property, a guardian may be appointed to act on his or her behalf. A guardian is someone who is appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person or property or both.¹ Adjudicating a person totally incapacitated and in need of a guardian deprives a person of his or her civil and legal rights.² The Legislature has recognized that the least restrictive form of guardianship should be used to ensure the most appropriate level of care and the protection of that person’s rights.³

The process to determine an individual’s incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person is incapable of exercising.⁴ Once a person has been adjudicated incapacitated, termed a “ward”, the court appoints a guardian and the letters of guardianship are issued.⁵ The order appointing a guardian must be consistent with the ward’s welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.⁶

¹ Section 744.102(9), F.S.

² Section 744.1012(1), F.S.

³ Section 744.1012(2), F.S.

⁴ Section 744.3201, F.S.

⁵ See s. 744.345, F.S.

⁶ Section 744.2005, F.S.

Types of Guardians

Two Main Forms of Guardianship

There are two main forms of guardianship:

- Guardianship over the person; or
- Guardianship over the property, which may be limited or plenary.⁷

For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily.⁸ However, when an individual's mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court appointed examination committee.⁹

Natural Guardians

Parents are considered natural guardians of their biological and adopted children, up until the time that their children cease to be minors, or unless the parents' parental rights have been terminated.¹⁰

Guardian Advocates

Guardian advocates are appointed by the court for persons with developmental disabilities.¹¹ A circuit court may appoint a guardian advocate, without an adjudication of incapacity, for a developmentally disabled individual if the person:

- Lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person, property, or estate; or
- Has voluntarily petitioned for the appointment of a guardian advocate.¹²

Voluntary Guardians

A court may appoint a voluntary guardian for a person who:

- Is incapable of the care, custody, and management of his or her estate by reason of age or physical infirmity; and
- Has voluntarily petitioned for the appointment.¹³

The petition must be accompanied by a certificate of a licensed physician specifying that he or she has examined the petitioner and that the petitioner is competent to understand the nature of the guardianship and his or her delegation of authority.¹⁴ Notice of hearing on any petition for appointment and for authority to act must be given to the petitioner and to any person requested

⁷ See generally, s. 744.102(9), F.S. A plenary guardian exercises all delegable rights and powers of the ward after a court has determined that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

⁸ Section 744.341(1), F.S.

⁹ See generally, s. 744.102(12), F.S.

¹⁰ Section 744.301(1), F.S.

¹¹ Section 744.102(11), F.S.

¹² Section 744.3085, F.S.

¹³ Section 744.341(1), F.S.

¹⁴ *Id.*

by the petitioner.¹⁵ Such request may be made in the petition for appointment of guardian or in a subsequent written request for notice signed by the petitioner.¹⁶

Unless the voluntary guardianship is limited, a voluntary guardian appointed has the same duties and responsibilities as are provided by law for plenary guardians of the property.¹⁷ A voluntary guardianship may be terminated by the ward by filing a notice with the court that the voluntary guardianship is terminated.¹⁸

Successor Guardians

A successor guardian must be appointed and duly qualified before a guardian can be relieved of their duties.¹⁹ A successor guardian can only be appointed if a guardian dies, becomes incapacitated, or is removed. Successor guardians are governed by the laws concerning guardianships.²⁰

Appointment of a Guardian

The following may be appointed guardian of a ward:

- Any resident of Florida who is 18 years of age or older and has full legal rights and capacity;
- A nonresident if he or she is related to the ward by blood, marriage, or adoption;
- A trust company, a state banking corporation, or state savings association, or a national banking association or federal savings and loan association, provided the entity is authorized and qualified to exercise fiduciary powers in Florida;
- A nonprofit corporation organized for religious or charitable purposes and existing under the laws of Florida;
- A judge who is related to the ward by blood, marriage, or adoption, or has a close relationship with the ward or the ward's family, if he or she serves without compensation;
- A provider of health care services to the ward, whether direct or indirect, when the court specifically finds that there is no conflict of interest with the ward's best interests; or
- A for-profit corporation that meets certain qualifications, including being wholly owned by the person who is the circuit's public guardian in the circuit where the corporate guardian is appointed.²¹

Guardians²² who are not professional guardians²² are required to complete eight hours of instruction and training through a course approved by the chief judge of the circuit court and taught by a court-approved organization within four months after being appointed to a ward.²³

The instruction and training must cover:

- The legal duties and responsibilities of the guardian;
- The rights of the ward;

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 744.341(3), F.S.

¹⁸ Section 744.341(5), F.S.

¹⁹ Section 744.471, F.S.

²⁰ *Id.*

²¹ Section 744.309, F.S.

²² Other than a parent who is the guardian of the property of a minor child.

²³ Section 744.3145, F.S.

- The availability of local resources to aid the ward; and
- The preparation of habilitation plans and annual guardianship reports, including financial accounting for the ward's property.²⁴

Examining Committees

Section 744.331, F.S., sets forth the procedures for determining whether a person is incapacitated. The notice of filing of a petition to determine incapacity and the petition for appointment of a guardian must be read to the alleged incapacitated person.²⁵ The alleged incapacitated person must be provided with an attorney, who cannot serve as the guardian or counsel for the guardian.²⁶ Within five days of filing a petition for determination of incapacity, the court must appoint an examining committee consisting of three members, which must include a psychiatrist or physician and two other persons, such as a psychologist, a nurse, social worker, gerontologist, or other qualified persons with sufficient knowledge, skill, experience, or training.²⁷

Each committee member must examine the person and then issue a report evaluating the person's mental health, functional ability, and physical health.²⁸ The examining committee members must each submit their examining reports within 15 days after appointment.²⁹ Within three days after the report is filed and at least 10 days before the hearing, a copy of the committee member's report must be served on the petitioner and on the attorney for the alleged incapacitated person.³⁰ If the committee determines that the person is not incapacitated in any respect, the court must dismiss the petition.³¹ However, if at least two of the three examining committee members conclude the person is incapacitated in some respect, the court proceeds to a hearing on the petition and makes a final determination based on the evidence presented by the parties.³²

Emergency Temporary Guardianship

A court may appoint an emergency temporary guardian³³ for an allegedly incapacitated person upon a finding that there appears to be an imminent danger that:

- The physical or mental health or safety of the person will be seriously impaired; or
- The person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.³⁴

Under those circumstances, a court may appoint an emergency temporary guardian after the filing of a petition for determination of incapacity and before the appointment of a guardian.³⁵

²⁴ *Id.*

²⁵ Section 744.331(1), F.S.

²⁶ Section 744.331(2)(c), F.S.

²⁷ Section 744.331(3)(a), F.S.

²⁸ Section 744.331(3)(e)-(f), F.S.

²⁹ Section 744.331(3)(e), F.S.

³⁰ Section 744.331(3)(h), F.S.

³¹ Section 744.331(4), F.S.

³² Section 744.331(5), F.S.

³³ Section 744.3031(1), F.S.

³⁴ *Id.*

³⁵ *Id.*

The court must appoint counsel to represent the alleged incapacitated person during the proceedings.³⁶ Further, the court may appoint an emergency temporary guardian on its own motion if no petition for appointment of guardian has been filed when the order determining incapacity is entered.³⁷

Office of Public and Professional Guardians

In 1999, the Legislature created the “Public Guardianship Act” and established the Statewide Public Guardianship Office (SPGO) within the DOEA.³⁸ In 2016, the Legislature renamed the Statewide Public Guardianship Office within the DOEA as the Office of Public and Professional Guardians (OPPG), required OPPG to regulate professional guardians and investigate complaints, and added six full-time equivalent positions to the OPPG, including an attorney and investigators.³⁹ The OPPG appoints local public guardian offices to provide guardianship services to people who have neither adequate income nor assets to afford a private guardian, nor any willing family or friend to serve.⁴⁰

There are 17 public guardian offices that serve all 67 counties.⁴¹ Since 2016, approximately 550 professional guardians have registered with the OPPG.⁴²

Complaint Investigations

Any person may submit a complaint against a professional guardian to the OPPG. Once the OPPG receives a complaint, it is required to:

- Review and, if determined legally sufficient,⁴³ investigate complaints against professional guardians;
- Initiate an investigation no later than 10 business days after the OPPG receives a complaint;
- Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and person filing the complaint within 60 days;
- Obtain supporting information, including interviewing the ward, family member, or interested party, or documentation to determine the legal sufficiency of a complaint;
- Dismiss any complaint that is not legally sufficient; and
- Coordinate with the clerks of court to avoid duplication of duties.

According to the DOEA, the annual numbers of complaints filed against a guardian or involving a guardianship since 2016 are as follows:

- 183 in 2016;
- 132 in 2017;

³⁶ *Id.*

³⁷ Section 744.3031(2), F.S.

³⁸ Chapter 99-277, L.O.F.

³⁹ Chapter 2016-40, L.O.F.

⁴⁰ The DOEA, *Office of Public and Professional Guardians*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited January 22, 2022).

⁴¹ The DOEA, *Office of Public and Professional Guardians (OPPG)*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited January 23, 2022).

⁴² *Id.*

⁴³ Section 744.2004(1), F.S., states that a complaint is legally sufficient if it contains ultimate facts that show a violation of a standard of practice by a professional guardian has occurred.

- 56 in 2018;
- 113 in 2019;
- 169 in 2020; and
- 89 in the first 6-months of 2021.⁴⁴

The annual number of public records requests regarding OPPG complaints since 2017 are as follows:

- 17 in 2017;
- 11 in 2018;
- 63 in 2019;
- 31 in 2020; and
- 48 in the first 8-months of 2021.⁴⁵

Public and Professional Guardians

A professional guardian is a guardian who has at any time rendered services to three or more wards as their guardian; however, a person serving as a guardian for two or more relatives is not considered a professional guardian.⁴⁶ A public guardian is considered a professional guardian for purposes of regulation, education, and registration.⁴⁷

Registration

A professional guardian must register with the OPPG annually.⁴⁸ As part of the registration, the professional guardian must:

- Provide sufficient information to identify the professional guardian;
- Complete a minimum of 40 hours of instruction and training through a course approved or offered by the OPPG;⁴⁹
- Successfully pass an examination approved by the DOEA to demonstrate competency to act as a professional guardian;
- Undergo a criminal background check by the Federal Bureau of Investigation and the Florida Department of Law Enforcement;
- Submit to a credit history check; and
- Maintain a current blanket bond.^{50, 51}

⁴⁴ Email from Derek Miller, Legislative Affairs Director, the DOEA, August 26, 2021 (on file with the Senate Children, Families, and Elder Affairs Committee).

⁴⁵ *Id.*

⁴⁶ Section 744.102(17), F.S.

⁴⁷ *Id.*

⁴⁸ Section 744.2002, F.S.

⁴⁹ This training may not be paid with the assets of the ward.

⁵⁰ Section 744.2003(2), F.S., further requires the bond to be maintained by the guardian in an amount not less than \$50,000 and must cover all wards for whom the guardian has been appointed at any given time. The liability of the provider of the bond is limited to the face amount of the bond, regardless of the number of wards for whom the professional guardian has been appointed.

⁵¹ Sections 744.2002(3) and 744.3135, F.S.

Guardians registered with the OPPG must complete a minimum of 16 hours of continuing education every two calendar years after the year in which the initial 40-hour educational requirement is met. The ward's assets may not be used to pay for such education.⁵²

Guardians seeking appointment by the court and all employees of a professional guardian who have a fiduciary responsibility to the ward must submit to a credit history check and undergo a level 2 background screening.⁵³ The DOEA must ensure the clerks of the court and the chief judge of each judicial circuit receive information about each registered professional guardian.⁵⁴

The executive director of the OPPG may deny registration to a professional guardian if the executive director determines that the guardian's proposed registration, including the guardian's credit or criminal investigations, indicates that registering the professional guardian would violate any provision of ch. 744, F.S.⁵⁵ The OPPG is required to report any suspension or revocation of a professional guardian's registration to the court of competent jurisdiction for any guardianship case to which the professional guardian is currently appointed.⁵⁶

Responsibilities of the Clerk of the Circuit Court

In addition to the duty to serve as the custodian of the guardianship files, the clerk must review each initial and annual guardianship report to ensure that it contains required information about the ward.⁵⁷ Guardians are required to file initial reports and annual reports consisting of accounting or guardianship plans after they are appointed to a ward.⁵⁸ The initial guardianship report, for a guardian of a ward's property, must consist of a verified inventory of such property.⁵⁹ For a guardian of a person, the initial guardianship report must consist of an initial guardianship plan, including details such as where the ward will live and any medical or social services the ward may need.⁶⁰ Annual plans must consist of an annual accounting of the ward's property and the process by which the ward is being served by the guardian.⁶¹

The clerk is required to complete his or her review of the initial or annual report within 30 days after the filing of such reports.⁶² The clerk is also required to audit the verified inventory and accountings report within 90 days of its filing, and report his or her findings to the court.⁶³ The clerk must notify the court when a required report is not timely filed by a guardian.⁶⁴

⁵² Section 744.2003(3), F.S.

⁵³ Section 744.3135(1), F.S.

⁵⁴ Section 744.2002(9), F.S.

⁵⁵ Section 744.2002, F.S.

⁵⁶ Section 744.2004(4), F.S.

⁵⁷ Section 744.368, F.S.

⁵⁸ Section 744.361, F.S.

⁵⁹ Section 744.362, F.S.,

⁶⁰ Sections 744.362–744.363, F.S.

⁶¹ Section 744.367, F.S.

⁶² Section 744.368(2), F.S.

⁶³ *Id.*

⁶⁴ *Id.*

If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship.⁶⁵

If a guardian fails to produce records and documents to the clerk upon request, the clerk may request the court to enter an order requiring a guardian to file the report.⁶⁶ The judge may also impose sanctions on the guardian, which may include contempt, removal of the guardian, and fines.⁶⁷

Florida Clerks of Court Operations Corporation

The Legislature created the CCOC in 2003.⁶⁸ It is a public corporation organized to perform the specific functions assigned in ss. 28.35, 28.36, and 28.37, F.S., which outline the CCOC's duties, the clerks' budget procedure for court-related functions, and how fines, fees, service charges, and costs are to be remitted to the state.⁶⁹ All clerks of the circuit court are members and hold their position and authority as ex officio members.⁷⁰ The responsibilities assigned to the CCOC are performed by an executive council composed of eight clerks from various size populations and three ex officio members designated by the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.⁷¹

In general terms, the CCOC was created to provide professional budget support to the 67 clerks of court and ensure that resources are fairly and equitably distributed for the operation of the courts.⁷² The CCOC's duties include, but are not limited to:

- Recommending to the Legislature changes in the amounts of various court-related fines, fees, service charges, and costs that are established in law to ensure that the clerks have reasonable and adequate funding to perform their court-related functions.
- Developing and certifying a uniform system of workload measures and workload standards for court-related functions.
- Entering into a contract with the Department of Financial Services to audit the court-related expenditures of individual clerks.
- Approving the proposed budgets submitted by clerks.⁷³

When approving the clerks' proposed budgets, the CCOC must ensure that the total combined budgets of the clerks do not exceed:

- The total estimated revenues from fees, service charges, costs, and fines for court-related functions that are available for court-related expenditures (as determined by the most recent Revenue Estimating Conference);

⁶⁵ *Id.*

⁶⁶ Sections 744.368–744.3685, F.S.

⁶⁷ Sections 744.3685(3) and 744.367(5), F.S.

⁶⁸ Chapter 2003-402, L.O.F.

⁶⁹ Sections 28.35-28.37, F.S.

⁷⁰ Section 28.35(1)(a), F.S.

⁷¹ Section 28.35(1)(b)1., F.S.

⁷² The CCOC, *About the CCOC*, available at <https://flccoc.org/about-us/> (last visited January 25, 2022).

⁷³ Section 28.35(2)(c), (d), (e), and (f), F.S.

- The total of unspent budgeted funds for court-related functions carried forward by the clerks from the previous county fiscal year; and
- The balance of funds remaining in the Clerks of Court Trust Fund after funds are transferred to General Revenue as required by law.⁷⁴

Guardianship Improvement Task Force

In the summer of 2021, the Florida Court Clerks and Comptrollers organized the Guardianship Improvement Task Force (Task Force), which examined numerous aspects of Florida’s guardianship system and laws.⁷⁵ The Task Force was formed with the goal of studying the current status of guardianships in Florida and making recommendations to improve the safety of wards across Florida.⁷⁶ The Task Force was comprised of 22 members, including judges, clerks of court, members of the Legislature, attorneys, state agencies, and numerous others.⁷⁷

Task Force Report

On November 15, 2021, the Task Force finalized a report summarizing their work and containing numerous legislative recommendations.⁷⁸ Recommendations encompassed the following nine focus areas:

- Statewide Guardianship Data Transparency;
- Statewide Uniformity in Forms, Processes, and Practices;
- Increased Oversight, Safeguards, and Court Monitoring Practices Across the State;
- Preserving the Rights, Dignity, and Autonomy of Alleged and Adjudged Incapacitated Persons;
- Ensuring the Use of Least Restrictive Alternatives (including Advance Directives and Supported Decision-Making);
- Health and Residential Care “Pipeline to Guardianship”;
- Enhanced Education and Qualification Requirements of Professionals and Parties in Guardianship;
- Increased Accessibility and Transparency of Professional Guardians and the Guardianship Process; and
- Need for Additional Workgroup(s) Responsible for Assessing Florida’s Guardianship System.⁷⁹

The report concluded that the most significant issue addressed by the Task Force was the need for a method to improve the availability of data in order to document problems within Florida’s

⁷⁴ Section 28.35(2)(f), F.S.

⁷⁵ The Florida Bar, Florida Bar News, *Guardianship Improvement Task Force Inks Its Final Report*, November 16, 2021, available at <https://www.floridabar.org/the-florida-bar-news/guardianship-improvement-task-force-inks-its-final-report/> (last visited January 23, 2022).

⁷⁶ Florida Court Clerks and Comptrollers, Guardianship Improvement Task Force, *About the Task Force*, available at <https://www.guardianshipimprovementtaskforce.com/> (last visited January 23, 2022).

⁷⁷ *Id.*

⁷⁸ Florida Court Clerks and Comptrollers, Guardianship Improvement Task Force, *Final Report*, January 2022, available at <https://guardianshiptf.wpengine.com/wp-content/uploads/2022/01/GITFReport-Jan2022.pdf> (last visited January 23, 2022) (hereinafter, “The Final Report”).

⁷⁹ *Id.* at pp. 19-23.

guardianship system.⁸⁰ The report further stated that a great deal of basic information related to guardianship cases is not readily available, including but not limited to:

- The number of people under guardianship;
- The number of guardians across the state;
- How many cases each guardian has under their purview;
- How much money and property are under the control of guardians across the state; and
- Information related to wards.⁸¹

According to the report, one topic of concern identified was the potential failure by the courts, clerks of court, and/or court monitors to report situations of abuse, neglect, or exploitation to Florida's Central Abuse Hotline.⁸² Without any formalized method for data collection by the courts in each guardianship case, the Task Force concluded that there is no way to determine whether the courts, clerks, and court monitors are complying with their mandatory reporting obligations provided under s. 415.1034, F.S.⁸³

Ultimately, the Task Force made the following four recommendations in the area of data transparency:

- Create a statewide data collection system for all guardianship cases;
- Require that every judicial circuit collect and report information in all guardianship cases regarding the existence of advance directives, powers of attorney, health care surrogate designations, and other similar legal documents, whether the document was honored (in part or total), and any reason given by the court for not honoring the document;
- Require that every judicial circuit collect and report guardianship case information and changes to the Office of Public and Professional Guardians (OPPG); and
- Require that OPPG promptly notify the chief judge in any judicial circuit in which a professional guardian is currently serving and/or has previously served as a guardian in a case of any verified findings of misconduct, disciplinary records, or removal of the guardian for cause by any other court.⁸⁴

The report also noted that exactly how widespread and extensive such abuses by guardians may be remains is unknown, due in part to a lack of available data.⁸⁵ Relevant questions regarding the demographics of Florida's professional guardians include:

- How many professional guardians in Florida are also public guardians?
- How many professional guardians in Florida maintain dual (state or federal) licenses, such as attorneys barred to practice in Florida?
- How many professional guardians also serve as representative payees in non-guardianship cases?
- How many professional guardians in Florida take on pro bono cases?

⁸⁰ *Id.* at p. 29.

⁸¹ *Id.*

⁸² *Id.* at p. 30.

⁸³ Section 415.1034, F.S., provides that any person who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited must immediately report such knowledge or suspicion to the central abuse hotline.

⁸⁴ The Final Report at p. 29-38.

⁸⁵ *Id.* at p. 85.

- How many professional guardians are compensated by hospitals, assisted living facilities, or other health or residential care providers to serve as a guardian in specific cases?

To address these issues, the Task Force recommended the creation of a publicly accessible, online database regarding the registration, qualifications, and disciplinary/removal history for all professional guardians.⁸⁶

III. Effect of Proposed Changes:

Clerks of Court Operations Corporation Databases

Judicial Access Database

The bill creates s. 744.2112, F.S., requiring the CCOC and clerks of court, on or after July 1, 2023, to establish a statewide database (the judicial access database) of guardianship information to facilitate improved court oversight of guardianships. The bill limits access to member of the judiciary and their direct staff, and requires that access be restricted to only the information needed by individual court personnel for the performance of their duties, while in no way limiting access to judges and magistrates.

The bill requires the judicial access database to meet interoperability standards defined by the Florida Courts Technology Commission to allow each circuit court to easily access the data for regular use in judicial proceedings under ch. 744, F.S. The judicial access database must include, at a minimum:

- The status of each professional guardian's bond and registration data;
- Substantiated disciplinary data of each professional guardian and the grounds for such discipline;
- Information related to the status of guardian compliance with the statutory qualifications for guardianship;
- Information related to the status of required annual registrations and the status of statutorily required reports and submissions required under ch. 744, F.S.; and
- The number of wards served by each guardian, by ward county of residence.

The bill requires the judicial access database to be searchable by, at a minimum:

- Petitioner;
- Ward and ward demographic information;
- Guardian, guardian advocate, and guardian location;
- Counsel for all parties;
- Other parties to each case;
- Judge;
- Circuit; and
- Number of wards served by each guardian by the ward's county of residence.

The bill also requires the judicial access database to have the ability to generate statewide and circuit-level statistical data to provide assistance to the courts.

⁸⁶ *Id.* at p. 84.

Public Access Database

The bill also requires the CCOC to establish a publicly accessible webpage and database (the public accessible database) to facilitate improving transparency of guardianship cases to the public. As with the judicial access database, the webpage and database must be established on or after January 1, 2023.

Similar to the judicial access database, the bill directs the CCOC to generate statewide and circuit-level statistical data to provide assistance to the courts and the DOEA, and transparency to the public and policymakers regarding Florida's guardianship system. The bill limits such reports to including only aggregated and de-identified data, and requires the reports to be published on the CCOC webpage.

The bill requires the publicly accessible database to be searchable by professional guardian name in order to view the current data regarding:

- Number of wards served;
- Ward counties of residence; and
- Whether a ward is under a limited or plenary guardianship.

The bill specifically prohibits the database from allowing access to personal identifying information of wards. This will provide members of the public with needed information on guardianship matters throughout the state while maintaining the privacy and confidentiality of sensitive information related to wards.

The bill requires the OPPG to share registration and disciplinary data with the CCOC and clerks of court, and requires the CCOC to generate reports using information in both the judicial access database and the publicly accessible database at the request of the Legislature, judiciary, and the DOEA.

Development of Data Elements

The bill requires the CCOC to develop a list of specific data elements for inclusion in the judicial access database, and requires the CCOC to provide the list to the Legislature by January 1, 2023.

The bill directs the CCOC to develop a second list of proposed data elements to be included in the public accessible database, and it requires the data elements to be established in a manner that ensures the confidentiality of ward information.

The bill requires the CCOC to engage with relevant stakeholders in developing the lists for each database in order to obtain feedback for use in the development of specific data elements for use in either of the two databases created by the bill. The relevant stakeholders include but are not limited to:

- Judicial officers and magistrates who handle guardianship and probate matters;
- The Florida Guardianship Association;
- The Elder Law Section of the Florida Bar;
- The Real Property, Probate, and Trust Law Section of the Florida Bar;
- The DOEA.

The bill also directs the CCOC to collaborate with the Florida Courts Technology Commission to implement the data elements and databases to achieve interoperability.

Department of Elder Affairs Public Access Webpage

The bill also requires the OPPG to publish public professional guardian registration profiles on its website. The profiles must be accessible and searchable by the public and include, at a minimum:

- The guardian's name and business address;
- Documentation proving bonding and educational requirements have been met;
- The number and type of substantiated complaints against the guardian, if any; and
- Disciplinary actions taken by the DOEA against the guardian, if any.

The bill provides rule making authority the DOEA to implement this provision.

OPPAGA Report

The bill directs the CCOC to compile data collected from the clerks of court and the DOEA and submit the data to the Office of Program and Policy Analysis and Government Accountability (OPPAGA). The bill requires OPPAGA to analyze the data in order to evaluate trends in the use of guardianships and conduct a comparative analysis of guardianship laws in other states. OPPAGA must collaborate with the CCOC, the clerks of court, and the DOEA and submit the a report containing findings and recommendations to the Governor and the Legislature by October 15, 2024, and annually thereafter until October 15, 2027.

The bill specifies that the data included in the OPPAGA reports must:

- Be produced in a statewide, circuit-level, and county-level statistical format;
- Include only aggregated and de-identified data; and
- Not contain personal identifying information of wards.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill provides the CCOC with \$2.4 million in nonrecurring general revenue funds to establish the database. The bill also provides \$340,000 (\$40,000 recurring and \$300,000 nonrecurring) general revenue funds to the DOEA to implement the bill.

The CCOC may have recurring costs associated with maintenance of the database and the clerk of courts may have recurring costs associated with an increase in workload related to compiling data, yet those costs are currently indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the section 744.2112 of the Florida Statutes.

This bill creates section 744.2001 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS/CS by Rules on March 1, 2022

The CS:

- Requires the CCOC, on or after July 1, 2023, to create a limited access statewide database for the judiciary to increase judicial oversight and a publicly searchable website and database to increase transparency with the public.
- Requires the judicial oversight database to be accessible only by the judiciary and their direct staff to perform court personnel's duties.
- Provides an enumerated list of data elements that must, at a minimum, be included and list of searchable elements that must, at a minimum, be included in the judicial oversight database.
- Requires the COCC, on or after July 1, 2023, to also create a publicly accessible and searchable webpage that contains specified guardian information.
- Requires the CCOC to generate and publish monthly reports of statistical data and generate other reports upon request by certain entities.
- Requires the CCOC to work with stakeholders to develop proposed lists of data elements for inclusion in the judicial oversight and publicly searchable databases and provide the lists to the Governor and Legislature by January 1, 2023.
- Requires the DOEA to create a publicly accessible webpage that contains specified guardian information, including disciplinary actions taken against a professional guardian and provides the DOEA with rulemaking authority to implement this provision.
- Requires the OPPAGA to conduct a comparative analysis and to study trends in the use of Florida's guardianship system and provide an annual report to the Governor and the Legislature beginning in 2024 through 2027.
- Provides a \$2.4 million nonrecurring general revenue appropriation to the CCOC to develop the databases.
- Provides \$340,000, of which \$300,000 is nonrecurring, to the DOEA to implement the provisions of the bill.

CS by Children, Families, and Elder Affairs on January 25, 2022:

The CS:

- Requires the CCOC and clerks of court to create and maintain a guardianship database, rather than the DOEA as under the original bill;
- Requires the database to have the ability to generate statewide and circuit-level statistical data of assistance to the courts and the DOEA;
- Requires the database to be interoperable with existing data systems in each circuit court;
- Requires the database to include and be searchable by minimum data points;
- Requires the OPPG to share registration and disciplinary data with the CCOC and clerks of court;
- Requires the OPPG to publish public professional guardian registration profiles on its website;
- Requires the profiles to be accessible and searchable by the public and to include certain minimum information;
- Removes conforming provisions made in ss. 744.2001, 744.362, 744.363, 744.365, and 744.367, F.S.;
- Removes legislative findings and intent;

- Removes dates specifying when data must be submitted to the DOEA and published; and
- Removes language specifying that any information which, pursuant to s. 119.071, F.S., is exempt from public records disclosure requirements when held by a reporting agency retains that exempt status after being submitted to the DOEA.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
