

26 | convincing evidence to deny visitation or other
 27 | contact; authorizing the court to establish reasonable
 28 | limitations on such visitation; requiring that any
 29 | limitations on visitation or other contact be
 30 | specified in the order determining incapacity;
 31 | requiring a jury to make certain decisions under
 32 | certain circumstances; authorizing the court to grant
 33 | authority to certain persons even if a guardian is
 34 | appointed; amending s. 744.334, F.S.; revising
 35 | requirements for a petition for the appointment of a
 36 | guardian; amending ss. 744.365 and 744.3678, F.S.;
 37 | requiring the verified inventory and annual accounting
 38 | be made available to certain persons; amending ss.
 39 | 744.361, 744.462, and 744.474, F.S.; conforming
 40 | provisions to changes made by the act; amending ss.
 41 | 44.407 and 744.2003, F.S.; conforming cross-
 42 | references; providing an effective date.

43 |
 44 | Be It Enacted by the Legislature of the State of Florida:

45 |
 46 | Section 1. This act may be cited as "Karilyn's Law."

47 | Section 2. Subsections (8) through (22) of section
 48 | 744.102, Florida Statutes, are renumbered as subsections (9)
 49 | through (23), respectively, and a new subsection (8) is added to
 50 | that section, to read:

51 744.102 Definitions.—As used in this chapter, the term:
 52 (8) "Family" means a parent, sibling, child, spouse, or
 53 any other relative by blood, marriage, or adoption of the minor,
 54 ward, or alleged incapacitated person.

55 Section 3. Subsection (2) of section 744.2006, Florida
 56 Statutes, is amended to read:

57 744.2006 Office of Public and Professional Guardians;
 58 appointment, notification.—

59 (2) The executive director shall appoint or contract with
 60 a public guardian from the list of candidates described in
 61 subsection (1). A public guardian must meet the qualifications
 62 for a guardian as prescribed in s. 744.309(1)(a). Public
 63 guardians for alleged incapacitated persons or minors must be
 64 appointed on a rotating basis by the executive director. Upon
 65 appointment of the public guardian, the executive director shall
 66 notify the chief judge of the judicial circuit and the Chief
 67 Justice of the Supreme Court of Florida, in writing, of the
 68 appointment.

69 Section 4. Subsection (2) of section 744.3021, Florida
 70 Statutes, is amended to read:

71 744.3021 Guardians of minors.—

72 (2) A minor is not required to attend the hearing on the
 73 petition for appointment of a guardian, unless otherwise
 74 directed by the court. During the hearing on the petition for
 75 appointment of a guardian, the court shall establish the

76 visitation rights of the minor's family. There is a rebuttable
77 presumption in favor of allowing visitation or other contact
78 with the minor's family. Visitation or other contact may only be
79 denied upon a showing of clear and convincing evidence that
80 visitation or other contact is not in the best interests of the
81 minor. The court may establish reasonable limitations on the
82 visitation rights of the minor's family. The court must include
83 any such limitations in the order of appointment.

84 Section 5. Subsections (1) and (3) of section 744.3203,
85 Florida Statutes, is amended to read:

86 744.3203 Suspension of power of attorney before incapacity
87 determination.—

88 (1) At any time during proceedings to determine incapacity
89 but before the entry of an order determining incapacity, the
90 authority granted under an alleged incapacitated person's power
91 of attorney to a parent, spouse, child, or grandchild is
92 suspended only if ~~when~~ the petitioner files a motion stating
93 that a specific power of attorney should be suspended for any of
94 the following grounds:

95 (a) The agent's decisions are not in accord with the
96 alleged incapacitated person's known desires.

97 (b) The power of attorney is invalid.

98 (c) The agent has failed to discharge his or her duties or
99 incapacity or illness renders the agent incapable of discharging
100 duties.

101 (d) The agent has abused powers.

102 (e) There is a danger that the property of the alleged
 103 incapacitated person may be wasted, misappropriated, or lost
 104 unless the authority under the power of attorney is suspended.

105
 106 Grounds for suspending a power of attorney do not include the
 107 existence of a dispute between the agent and the petitioner
 108 which is more appropriate for resolution in some other forum or
 109 a legal proceeding other than a guardianship proceeding.

110 (3) Upon the filing of a response to the motion by the
 111 agent under the power of attorney, the court shall impanel a
 112 jury to determine if the petitioner met his or her burden to
 113 suspend a power of attorney and schedule the motion for an
 114 expedited hearing. Unless an emergency arises and the agent's
 115 response sets forth the nature of the emergency, the property or
 116 matter involved, and the power to be exercised by the agent,
 117 notice must be given to all interested persons, the alleged
 118 incapacitated person, and the alleged incapacitated person's
 119 attorney. Based on the jury's determination, the court order
 120 following the hearing must set forth what powers the agent is
 121 permitted to exercise, if any, pending the outcome of the
 122 petition to determine incapacity.

123 Section 6. Paragraph (b) of subsection (1) of section
 124 744.3215, Florida Statutes, is amended to read:

125 744.3215 Rights of persons determined incapacitated.—

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

128 (b) To have continuing review of the need for restriction
 129 of his or her rights and every 3 years a full reevaluation of
 130 the need for guardianship, including an examination by an
 131 examining committee and an adjudicatory hearing as required
 132 under s. 744.331. The adjudicatory hearing may not be conducted
 133 by the same judge who conducted the initial adjudicatory
 134 hearing.

135 Section 7. Paragraph (a) of subsection (5) and paragraphs
 136 (a) and (f) of subsection (6) of section 744.331, Florida
 137 Statutes, are amended and paragraph (d) is added to subsection
 138 (5) of that section, to read:

139 744.331 Procedures to determine incapacity.—

140 (5) ADJUDICATORY HEARING.—

141 (a) Upon appointment of the examining committee, the court
 142 shall set the date upon which the petition will be heard and, if
 143 necessary, impanel a jury to determine the validity of the
 144 alleged incapacitated person's trust, trust amendment, power of
 145 attorney, or will. The adjudicatory hearing must be conducted at
 146 least 10 days, which time period may be waived, but no more than
 147 30 days, after the filing of the last filed report of the
 148 examining committee members, unless good cause is shown. The
 149 adjudicatory hearing must be conducted at the time and place
 150 specified in the notice of hearing and in a manner consistent

151 with due process.

152 (d) In the adjudicatory hearing on a petition alleging
153 incapacity, the court shall establish the visitation rights of
154 the family of the person alleged to be incapacitated. There is a
155 rebuttable presumption in favor of allowing visitation or other
156 contact with the family of the person alleged to be
157 incapacitated. Visitation or other contact may only be denied
158 upon a showing of clear and convincing evidence that visitation
159 or other contact is not in the best interests of the person
160 alleged to be incapacitated. The court may establish reasonable
161 limitations on the visitation rights of the family of the person
162 alleged to be incapacitated. The court must include any such
163 limitations in the order determining incapacity.

164 (6) ORDER DETERMINING INCAPACITY.—If, after making
165 findings of fact on the basis of clear and convincing evidence,
166 the court finds that a person is incapacitated with respect to
167 the exercise of a particular right, or all rights, the court
168 shall enter a written order determining such incapacity. In
169 determining incapacity, the court shall consider the person's
170 unique needs and abilities and may only remove those rights that
171 the court finds the person does not have the capacity to
172 exercise. A person is determined to be incapacitated only with
173 respect to those rights specified in the order.

174 (a) The court shall make all of the following findings:

175 1. The exact nature and scope of the person's

176 incapacities.~~†~~

177 2. The exact areas in which the person lacks capacity to
 178 make informed decisions about care and treatment services or to
 179 meet the essential requirements for her or his physical or
 180 mental health or safety.~~†~~

181 3. The specific legal disabilities to which the person is
 182 subject.~~†~~ and

183 4. The specific rights that the person is incapable of
 184 exercising.

185 5. The limitations on the visitation rights of the
 186 person's family, if any.

187 (f) ~~If Upon the filing of a verified statement by an~~
 188 ~~interested person~~ files a verified statement stating~~†~~

189 ~~1.~~ that he or she has a good faith belief that the alleged
 190 incapacitated person's trust, trust amendment, ~~or~~ durable power
 191 of attorney, or will is invalid~~†~~ and provides

192 ~~2.~~ a reasonable factual basis for that belief, the court
 193 must impanel a jury to consider the facts provided and determine
 194 if the trust, trust amendment, ~~or~~ durable power of attorney, or
 195 will is a reasonable ~~shall not be deemed to be an~~ alternative to
 196 the appointment of a guardian. However, the appointment of a
 197 guardian does not limit the court's power to determine that
 198 certain authority granted by a trust, trust amendment, durable
 199 power of attorney, or will is to remain exercisable by the
 200 agent.

201 Section 8. Subsection (1) of section 744.334, Florida
 202 Statutes, is amended to read:

203 744.334 Petition for appointment of guardian or
 204 professional guardian; contents.—

205 (1) Every petition for the appointment of a guardian must
 206 ~~shall~~ be verified by the petitioner and ~~shall~~ contain all of the
 207 following information ~~statements~~, to the best of petitioner's
 208 knowledge and belief: ~~—showing~~

209 (a) The name, age, residence, and post office address of
 210 the alleged incapacitated person or minor. ~~†~~

211 (b) The nature of the ~~her or his~~ incapacity of the alleged
 212 incapacitated person, if any. ~~†~~

213 (c) The extent of guardianship desired, either plenary or
 214 limited. ~~†~~

215 (d) The residence and post office address of the
 216 petitioner. ~~†~~

217 (e) The names and addresses of the next of kin of the
 218 alleged incapacitated person or minor, if known to the
 219 petitioner. ~~†~~

220 (f) The name of the proposed guardian and the reasons why
 221 she or he should be appointed guardian. ~~†~~

222 (g) Whether the proposed guardian is a professional
 223 guardian. ~~†~~

224 (h) The relationship and previous relationship of the
 225 proposed guardian to the alleged incapacitated person or minor. ~~†~~

226 (i) Whether the alleged incapacitated person or minor has
 227 a valid trust, trust amendment, durable power of attorney, or
 228 will.

229 (j) Any other type of guardianship under part III of this
 230 chapter or alternatives to guardianship that the alleged
 231 incapacitated person or minor has designated or is in currently
 232 or has been in previously.

233 (k) The reasons why a guardian advocate under s. 744.3085
 234 or other alternatives to guardianship, including a valid will
 235 executed as required in s. 732.502, are insufficient to meet the
 236 needs of the alleged incapacitated person or minor.

237 (l) The nature and value of property subject to the
 238 guardianship. The petition must state whether a willing and
 239 qualified guardian cannot be located.

240
 241 As used in this subsection, the term "alternatives to
 242 guardianship" means an advance directive as defined in s.
 243 765.101, a durable power of attorney as provided in chapter 709,
 244 a representative payee under 42 U.S.C. s. 1007, or a trust
 245 instrument as defined in s. 736.0103.

246 Section 9. Paragraph (b) of subsection (13) and paragraph
 247 (d) of subsection (14) of section 744.361, Florida Statutes, are
 248 amended to read:

249 744.361 Powers and duties of guardian.—

250 (13) Recognizing that every individual has unique needs

251 and abilities, a guardian who is given authority over a ward's
 252 person shall, as appropriate under the circumstances:

253 (b) Allow the ward to maintain visitation or other contact
 254 with his or her family and friends unless a court has:

255 1. Determined that visitation or other contact is not in
 256 the best interests of the guardian ~~believes that such contact~~
 257 ~~may cause harm to the ward;~~ or

258 2. Placed reasonable limitations on such visitation or
 259 other contact in the order determining incapacity or, in the
 260 case of a minor, the order of appointment.

261 (14) A professional guardian must ensure that each of the
 262 guardian's wards is personally visited by the guardian or one of
 263 the guardian's professional staff at least once each calendar
 264 quarter. During the personal visit, the guardian or the
 265 guardian's professional staff person shall assess:

266 (d) The nature and extent of visitation or other contact
 267 ~~and communication~~ with the ward's family and friends.

268
 269 This subsection does not apply to a professional guardian who
 270 has been appointed only as guardian of the property.

271 Section 10. Section 744.462, Florida Statutes, is amended
 272 to read:

273 744.462 Determination regarding alternatives to
 274 guardianship.—Any judicial determination concerning the validity
 275 of the ward's durable power of attorney, trust, ~~or~~ trust

276 amendment, or will must shall be promptly reported in the
277 guardianship proceeding by the guardian of the property. If the
278 instrument has been judicially determined to be valid or if,
279 after the appointment of a guardian, a petition is filed
280 alleging that there is an alternative to guardianship which will
281 sufficiently address the problems of the ward, the court shall
282 impanel a jury to review the continued need for a guardian and
283 the extent of the need for delegation of the ward's rights.

284 Section 11. Subsection (1) of section 744.365, Florida
285 Statutes, is amended to read:

286 744.365 Verified inventory.—

287 (1) FILING.—A guardian of the property shall file a
288 verified inventory of the ward's property. The verified
289 inventory must be made available to the ward's family, next of
290 kin, and the beneficiaries and heirs of a valid will.

291 Section 12. Subsection (1) of section 744.3678, Florida
292 Statutes, is amended to read:

293 744.3678 Annual accounting.—

294 (1) Each guardian of the property must file an annual
295 accounting with the court. The annual accounting must be made
296 available to the ward's family, next of kin, and the
297 beneficiaries and heirs of a valid will.

298 Section 13. Section 744.372, Florida Statutes, is amended
299 to read:

300 744.372 Judicial review of guardianships.—The court

301 retains jurisdiction over all guardianships.

302 (1) The court shall review the appropriateness and extent
 303 of a guardianship annually and:

304 (a)~~(1)~~ If an objection to the terms of the guardianship
 305 report has been filed pursuant to s. 744.367;

306 (b)~~(2)~~ If interim review has been requested under s.
 307 744.3715;

308 (c)~~(3)~~ If a person, including the ward, has filed a
 309 suggestion of increased capacity; or

310 (d)~~(4)~~ If the guardianship report has not been received
 311 and the guardian has failed to respond to a show cause order.

312 (2) Every 3 years the court must conduct a full
 313 reevaluation of the need for guardianship, including an
 314 examination by an examining committee and an adjudicatory
 315 hearing as required under s. 744.331. The adjudicatory hearing
 316 required under this subsection may not be conducted by the same
 317 judge who conducted the initial adjudicatory hearing.

318 Section 14. Subsection (20) of section 744.474, Florida
 319 Statutes, is amended to read:

320 744.474 Reasons for removal of guardian.—A guardian may be
 321 removed for any of the following reasons, and the removal shall
 322 be in addition to any other penalties prescribed by law:

323 (20) Upon a showing that removal of the current guardian
 324 is in the best interests ~~interest~~ of the ward. In determining
 325 whether a guardian who is a family member of ~~related by blood or~~

326 ~~marriage to~~ the ward is to be removed, there is ~~shall be~~ a
 327 rebuttable presumption that the guardian is acting in the best
 328 interests of the ward.

329 Section 15. Paragraph (a) of subsection (5) of section
 330 44.407, Florida Statutes, is amended to read:

331 44.407 Elder-focused dispute resolution process.—

332 (5) QUALIFICATIONS FOR ELDERCARING COORDINATORS.—

333 (a) The court shall appoint qualified eldercaring
 334 coordinators who:

335 1. Meet one of the following professional requirements:

336 a. Are licensed as a mental health professional under
 337 chapter 491 and hold at least a master's degree in the
 338 professional field of practice;

339 b. Are licensed as a psychologist under chapter 490;

340 c. Are licensed as a physician under chapter 458 or
 341 chapter 459;

342 d. Are licensed as a nurse under chapter 464 and hold at
 343 least a master's degree;

344 e. Are certified by the Florida Supreme Court as a family
 345 mediator and hold at least a master's degree;

346 f. Are a member in good standing of The Florida Bar; or

347 g. Are a professional guardian as defined in s. 744.102 ~~s.~~
 348 ~~744.102(17)~~ and hold at least a master's degree.

349 2. Have completed all of the following:

350 a. Three years of postlicensure or postcertification

351 | practice.

352 | b. A family mediation training program certified by the
353 | Florida Supreme Court. ~~and~~

354 | c. An eldercaring coordinator training program certified
355 | by the Florida Supreme Court. The training must total at least
356 | 44 hours and must include advanced tactics for dispute
357 | resolution of issues related to aging, illness, incapacity, or
358 | other vulnerabilities associated with elders, as well as elder,
359 | guardianship, and incapacity law and procedures and less
360 | restrictive alternatives to guardianship; phases of eldercaring
361 | coordination and the role and functions of an eldercaring
362 | coordinator; the elder's role within eldercaring coordination;
363 | family dynamics related to eldercaring coordination; eldercaring
364 | coordination skills and techniques; multicultural competence and
365 | its use in eldercaring coordination; at least 6 hours of the
366 | implications of elder abuse, neglect, and exploitation and other
367 | safety issues pertinent to the training; at least 4 hours of
368 | ethical considerations pertaining to the training; use of
369 | technology within eldercaring coordination; and court-specific
370 | eldercaring coordination procedures. Pending certification of a
371 | training program by the Florida Supreme Court, the eldercaring
372 | coordinator must document completion of training that satisfies
373 | the hours and the elements prescribed in this sub-subparagraph.

374 | 3. Have successfully passed a Level 2 background screening
375 | as provided in s. 435.04(2) and (3) or are exempt from

376 disqualification under s. 435.07. The prospective eldercaring
 377 coordinator must submit a full set of fingerprints to the court
 378 or to a vendor, entity, or agency authorized by s. 943.053(13).
 379 The court, vendor, entity, or agency shall forward the
 380 fingerprints to the Department of Law Enforcement for state
 381 processing, and the Department of Law Enforcement shall forward
 382 the fingerprints to the Federal Bureau of Investigation for
 383 national processing. The prospective eldercaring coordinator
 384 shall pay the fees for state and federal fingerprint processing.
 385 The state cost for fingerprint processing shall be as provided
 386 in s. 943.053(3)(e) for records provided to persons or entities
 387 other than those specified as exceptions therein.

388 4. Have not been a respondent in a final order granting an
 389 injunction for protection against domestic, dating, sexual, or
 390 repeat violence or stalking or exploitation of an elder or a
 391 disabled person.

392 5. Have met any additional qualifications the court may
 393 require to address issues specific to the parties.

394 Section 16. Subsection (3) of section 744.2003, Florida
 395 Statutes, is amended to read:

396 744.2003 Regulation of professional guardians;
 397 application; bond required; educational requirements.—

398 (3) Each professional guardian defined in s. 744.102 ~~s.~~
 399 ~~744.102(17)~~ and public guardian must receive a minimum of 40
 400 hours of instruction and training. Each professional guardian

401 must receive a minimum of 16 hours of continuing education every
402 2 calendar years after the year in which the initial 40-hour
403 educational requirement is met. The instruction and education
404 must be completed through a course approved or offered by the
405 Office of Public and Professional Guardians. The expenses
406 incurred to satisfy the educational requirements prescribed in
407 this section may not be paid with the assets of any ward. This
408 subsection does not apply to any attorney who is licensed to
409 practice law in this state or an institution acting as guardian
410 under s. 744.2002(7).

411 Section 17. This act shall take effect July 1, 2023.