

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 813 Support for Dependent Adult Children

**SPONSOR(S):** Children, Families & Seniors Subcommittee and Civil Justice Subcommittee, Tant and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 226

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**FINAL HOUSE FLOOR ACTION:** 115 Y's

0 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 813 passed the House on May 3, 2023, as CS/CS/SB 226, as amended.

Generally, the obligation of a parent to support a child ceases when the child reaches majority (usually age 18). However, a limited exception arises when the child is unable to support himself or herself because of physical or mental disabilities. Under the common law, parents have a duty of support for a dependent adult child (DAC) who is unable to support himself or herself because of a mental or physical incapacity that began prior to the child reaching majority. This duty of support rests upon both parents throughout the dependency and throughout their lives. Aside from the limited provisions under s. 743.07, F.S., current law does not otherwise recognize or regulate any right to support for DACs, nor does it provide guidelines for calculating support owed to DACs.

Under current law, each parent has a fundamental obligation to support his or her minor or legally dependent child. The court shall order either or both parents owing a duty of support to the child to pay support pursuant to s. 61.30, F.S. A parent's child support obligation is calculated based on the child support guidelines established in s. 61.30, F.S. These guidelines use a mathematical formula to develop the basic child support obligation of each parent.

Parents have a common law obligation to support their DAC; however, such duty is not fully codified in the Florida Statutes. S. 743.07(2), F.S., permits a court to require support for a dependent child over the age of 18 when such dependency is due to a mental or physical incapacity which began before the child reached the age of majority. While Florida law allows a court to order support for a DAC, it does not require or create a blanket obligation to do so. As such, there is no consistency from court to court regarding how to handle support for a DAC. Further, there is no guidance as to how to calculate such support, as is similarly found in ch. 61 for the calculation of support for a minor child.

The bill codifies the common law obligation of a parent to support a DAC after he or she reaches the age of majority. The bill specifies who may bring an action to establish such support and provides that support payments should be made directly to the DAC or his or her court-appointed guardian advocate, guardian, or agent under a durable power of attorney. The bill permits a portion of the support to be placed in a special needs trust or pooled trust for the DAC's benefit and prohibits a court from entering an order for support that would make the DAC ineligible for programs or services the DAC currently participates in, receives, or would be reasonably expected to participate in after reaching the age of majority.

The bill also establishes new support guidelines for courts to use in support calculations for a DAC. The bill permits a petition to appoint a guardian advocate to request authority to file a civil suit to establish support payments on behalf of the DAC. Under the bill, any modifications and enforcement of support for a DAC must be made in accordance with the requirements established for regular child support under ch. 61. The bill assigns jurisdiction over a DAC and defines the court's role in such a proceeding.

The bill was approved by the Governor on June 12, 2023, ch. 2023-213, L.O.F., and will become effective on July 1, 2023.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

**STORAGE NAME:** h0813z1.DOCX

**DATE:** 6/20/2023

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Support for Dependent Adult Children

Generally, the obligation of a parent to financially support a child ceases when the child reaches majority (usually age 18). However, a limited exception arises when the child is unable to support himself or herself because of physical or mental disabilities.<sup>1</sup> Under the common law, parents have a duty of support for a dependent adult child (DAC) who is unable to support himself or herself because of a mental or physical incapacity that began prior to the child reaching majority.<sup>2</sup> This duty of support rests upon both parents throughout the dependency.<sup>3</sup>

In 1973, the Legislature adopted s. 743.07, F.S., which removed the disability of nonage for those 18 years of age and older, but also preserved an exception for continued support of a certain class of dependent adults.<sup>4</sup> Specifically, s. 743.07(2) allows a court to order parents to continue financially supporting a dependent adult child, if either:

- The dependency was the result of a mental or physical incapacity that began prior to the person reaching majority.<sup>5</sup>
- The dependent person is between the ages of 18 and 19, is dependent in fact, and is still in high school but performing in good faith with a reasonable expectation of graduating before turning 19.

The circuit court is the proper court for such adjudications.<sup>6</sup> The right to receive support, and the corresponding right to bring the cause of action, belongs to the DAC,<sup>7</sup> although the DAC does not need to be adjudicated dependent before he or she reaches majority for the court to order extended support.<sup>8</sup> In cases where the parents of a dependent adult child have dissolved their marriage, and one party has fulfilled his or her child support obligations through the age of majority, an independent action may be brought to adjudicate that party's continuing support obligation for the DAC.<sup>9</sup>

So, while Florida common law recognizes the duty of parents to provide for their dependent adult children, aside from the limited provisions under s. 743.07, F.S., the Florida Statutes do not otherwise recognize or regulate any right to support for DACs, nor do they provide guidelines for calculating support owed to DACs.

##### Child Support

Under s. 61.29, F.S., each parent has a fundamental obligation to support his or her minor or legally dependent child. The court shall order either or both parents owing a duty of support to the child to pay support pursuant to s. 61.30, F.S. A parent's child support obligation is calculated based on the child support guidelines established in s. 61.30, F.S. These guidelines use a mathematical formula to develop the basic child support obligation of each parent. The court may not deviate from the basic

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<sup>1</sup> *Perla v. Perla*, 58 So. 2d 689, 690 (Fla. 1952).

<sup>2</sup> *Brown v. Brown*, 714 So. 2d 475, 477 (Fla. 5th DCA 1998); *Monitzer v. Monitzer*, 600 So. 2d 575, 575 (Fla. 2d DCA 1992); *Fincham v. Levin*, 155 So. 2d 883, 884 (Fla. 1st DCA 1963).

<sup>3</sup> *Fernandez v. Fernandez*, 306 So. 3d 1013, 1015 (Fla. 3d DCA 2020) (quoting *Hastings v. Hastings*, 841 So. 2d 484, 486 (Fla. 3d DCA 2003) (internal citations omitted)).

<sup>4</sup> *Id.* at 1015.

<sup>5</sup> *Id.* at 1016-17.

<sup>6</sup> *Id.* at 1015.

<sup>7</sup> *Id.*

<sup>8</sup> *Skelly v. Skelly*, 300 So. 3d 342, 345 (Fla. 5th DCA 2020) (confirming that s. 743.07(2), F.S., does not require that a child be adjudicated dependent before he or she reaches majority for the trial court to order extended support)).

<sup>9</sup> *Fernandez*, 306 So. 3d at 1015.

child support obligation provided under the guidelines by more than five percent when establishing the child support award except in very limited circumstances, such as when a court orders substantial time-sharing.

Generally, child support orders and income deduction orders entered on or after October 1, 2010, provide, among other things, for child support to terminate on a child's 18<sup>th</sup> birthday, except that the court may decide that child support should continue where either:

- The dependency was the result of a mental or physical incapacity that began prior to the person reaching majority.
- The dependent person is between the ages of 18 and 19, is dependent in fact, and is still in high school but performing in good faith with a reasonable expectation of graduating before turning 19.<sup>10</sup>

However, under current law, a parent may petition the court for modification and an extension of child support for a DAC before the DAC reaches the age of majority.<sup>11</sup> Once the DAC reaches the age of majority, the court no longer has jurisdiction to modify child support and the DAC must bring an independent action to adjudicate support.<sup>12</sup>

Additionally, a court that initially enters an order requiring a parent to make child support payments has continuing jurisdiction after entry of the initial order to modify the amount and terms and conditions of the child support payments if:

- The modification is found by the court to be in the best interests of the child;
- There is a substantial change in the circumstances of the parties;
- The child support payments are for an adult child who is dependent due to a mental or physical incapacity that began before age 18;
- The child support payments are for a child who is between the ages of 18 and 19 and is reasonably expected to graduate before age 19; or
- The child reaches majority, is emancipated, marries, joins the armed services, or dies.<sup>13</sup>

## Guardianship

If a court finds that a person lacks the ability to safely manage the things that belong to him or her, or lacks the ability to meet his or her basic health, safety, and self-care needs, a court may rule that the person is "incapacitated."<sup>14</sup> In many cases, after a court decides that a person is incapacitated, it may choose someone else to make some or all the decisions for the incapacitated person. This is known as a guardianship.<sup>15</sup>

Being placed in a guardianship may result in the loss of a person's right to make his or her own life choices. The rights that a person can lose include the right to contract, vote, travel, marry, work, consent to treatment, sue or defend lawsuits, choose living arrangements, make decisions about his or her social life, have a driver's license, personally apply for benefits, and manage money or property.<sup>16</sup>

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<sup>10</sup> Ss. 61.13(1)(a)1. and 743.07(2), F.S.

<sup>11</sup> *Phagan O/B/O L.D.P. v. McDuffee*, 296 So. 3d 957 (Fla. 5th DCA 2020); *Ruiz v. Ruiz*, 783 So. 2d 361 (Fla. 5th DCA 2001).

<sup>12</sup> *Brown v. Brown*, 714 So. 2d 475 (Fla. 5th DCA 1998).

<sup>13</sup> S. 61.13(1)(a)2., F.S.

<sup>14</sup> See generally Part V, ch. 744, F.S.; see also Disability Rights Florida, *What is Guardianship?*, [https://disabilityrightsflorida.org/disability-topics/disability\\_topic\\_info/what\\_is\\_guardianship](https://disabilityrightsflorida.org/disability-topics/disability_topic_info/what_is_guardianship) (last visited April 13, 2023).

<sup>15</sup> *Id.*

<sup>16</sup> S. 744.1012(1), F.S.; see also Disability Rights Florida, *Types of Guardianship*, [https://disabilityrightsflorida.org/disability-topics/disability\\_topic\\_info/types\\_of\\_guardianship](https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship) (last visited April 13, 2023).

A guardianship must be specific to the abilities and needs of the individual and should not be any more restrictive than necessary.<sup>17</sup> Consequently, there are different types of guardianships under state law, including:<sup>18</sup>

- Preneed guardian;<sup>19</sup>
- Voluntary guardianship;<sup>20</sup>
- Emergency temporary guardianship;<sup>21</sup>
- Limited guardianship;<sup>22</sup>
- Guardian advocate for individuals who have a developmental disability;<sup>23</sup>
- Guardian advocate for individuals receiving mental health treatment;<sup>24</sup> and
- Full (“plenary”) guardianship.<sup>25</sup>

The powers and duties of a court-appointed guardian include, but are not limited to:

- Filing an initial plan and annual reports;<sup>26</sup>
- Making provision for the medical, mental, rehabilitative, and personal care of the person;<sup>27</sup>
- Making residential decisions on behalf of the person;<sup>28</sup>
- Advocating on behalf of the person in institutional and other residential settings;<sup>29</sup> and
- Making financial decisions on behalf of the person.<sup>30</sup>

Among other requirements, guardians must file an annual guardianship report with the court.<sup>31</sup> The annual guardianship report must be filed within 90 days after the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. The annual guardianship report must include an annual guardianship plan<sup>32</sup> containing information regarding the residence of the person for whom the guardianship has been established; the medical and mental health conditions, treatment, and rehabilitation needs of the person; the social condition of the person; and a list of any preexisting orders not to resuscitate, or preexisting advance directives.<sup>33</sup>

### *Guardian Advocates*

A “guardian advocate” is a person appointed by court order to represent a person with developmental disabilities.<sup>34</sup> A “developmental disability” means:

- A disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome;
- Manifesting before the age of 18; and
- Constituting a substantial handicap that can reasonably be expected to continue indefinitely.<sup>35</sup>

Guardian advocacy is a way for family members, caregivers, or friends of a person with a developmental disability to obtain the legal authority to act on such person’s behalf if the person lacks

<sup>17</sup> S. 744.1012(2), F.S.; see also Disability Rights Florida, *Types of Guardianship*.

<sup>18</sup> See generally Disability Rights Florida, *Types of Guardianship*.

<sup>19</sup> Ss. 744.3045 and 744.3046, F.S.

<sup>20</sup> S. 744.341, F.S.

<sup>21</sup> S. 744.3031, F.S.

<sup>22</sup> Ss. 744.441(1), F.S. and s. 744.102(9)(a), F.S.

<sup>23</sup> Ss. 744.3085 and 393.12, F.S.

<sup>24</sup> Ss. 744.3085 and 394.4598, F.S.

<sup>25</sup> S. 744.441(1), F.S.; see also s. 744.102(9)(b), F.S. (defining “plenary guardian”).

<sup>26</sup> S. 744.361(6)-(7), F.S.

<sup>27</sup> S. 744.361(13)(f), F.S.

<sup>28</sup> S. 744.361(13)(h), F.S.

<sup>29</sup> S. 744.361(13)(i), F.S.

<sup>30</sup> S. 744.361(12), F.S.

<sup>31</sup> S. 744.367(1), F.S.

<sup>32</sup> S. 744.367(3)(a), F.S.

<sup>33</sup> S. 744.3675, F.S.

<sup>34</sup> Ss. 393.063(21) and 393.12, F.S.

<sup>35</sup> S. 393.063(12), F.S.

the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property, or if the person has voluntarily petitioned for the appointment of a guardian advocate.<sup>36</sup>

State law recognizes the appointment of a guardian advocate as a less restrictive alternative to guardianship.<sup>37</sup> A guardian advocate can be appointed without having to declare the person with a developmental disability incapacitated.<sup>38</sup> In a case with a guardian advocate, the court will also appoint an attorney for the person with the developmental disability to ensure that his or her best interests are protected.<sup>39</sup>

A guardian advocate for a person with a developmental disability has the same powers, duties, and responsibilities required of a guardian under the guardianship statute or as defined by court order issued under the statute governing the appointment of guardian advocates.<sup>40</sup>

### Special Needs Trusts and Pooled Trusts

A special needs trust, sometimes called a supplemental needs trust, is a legal mechanism which allows assets to be held on behalf of a person with disabilities without affecting his or her eligibility for means-tested public benefits such as Medicaid or Supplemental Security Income (“SSI”).<sup>41</sup>

Special needs trusts are meant to supplement the funds and services available through government programs.<sup>42</sup> While assets held by the trust are not used to determine the person’s qualification for such programs, there are regulations imposed regarding disbursements.<sup>43</sup> To create a valid special needs trust, the trust must be established in a way that complies with federal law.<sup>44</sup> Specifically, a special needs trust must:

- Contain the assets of an individual under age 65;
- Be established for an individual who has a disability that makes him or her substantially unable to work;<sup>45</sup>
- Be established for the benefit of the individual;
- Be established by the individual’s parent, grandparent, legal guardian, or a court; and
- Reimburse the state for all of the medical assistance paid on behalf of the individual from any remaining assets upon the individual’s death.<sup>46</sup>

Special needs trusts can be either “first-party” or “third-party” trusts.<sup>47</sup> A first-party special needs trust is created with assets belonging to an individual with disabilities, who becomes the “beneficiary.” The funds typically consist of a personal injury settlement or an inheritance. The person must be under 65 at the time that the trust is established. Funds remaining in the trust at the beneficiary’s death must be used to reimburse Medicaid for services to that individual before such funds can be distributed to anyone else.<sup>48</sup>

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<sup>36</sup> S. 393.12(2)(a), F.S.; see also Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), [https://flcourts18.org/docs/sem/Florida\\_Guardian\\_Advocacy\\_Law\\_and\\_information\\_Guide.pdf](https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf). (last visited April 13, 2023).

<sup>37</sup> S. 744.3085, F.S.

<sup>38</sup> S. 393.12(2)(a), F.S.

<sup>39</sup> S. 393.12(2)(b), F.S.

<sup>40</sup> S. 393.12(10), F.S.

<sup>41</sup> Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements* (2023), <https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/> (last visited April 13, 2023).

<sup>42</sup> Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements* (2023) <https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/> (last visited April 13, 2023).

<sup>43</sup> *Id.*

<sup>44</sup> 42 U.S.C. s. 1396p(d)(4).

<sup>45</sup> See 42 U.S.C. s. 1382c(a)(3).

<sup>46</sup> *Id.*

<sup>47</sup> Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements*.

<sup>48</sup> *Id.*

A third-party special needs trust is created with assets provided by a person other than the beneficiary, such as a parent, other relative, or friend of the beneficiary.<sup>49</sup> The trust can be created and funded during the life of the originator (known as an “inter vivos” trust) or as part of a last will and testament (known as a “testamentary” trust). Upon the beneficiary’s death, there is no requirement to use residual funds to reimburse Medicaid for services provided to the individual, and “remainder” beneficiaries may be named to receive those assets.<sup>50</sup>

Alternatively, a pooled trust is often a practical alternative for small estates or where a satisfactory trustee is difficult to establish. Sub-accounts belonging to many beneficiaries are managed as a single entity, usually by nonprofit corporations, which use the experience of social workers, money managers, and attorneys specializing in special needs cases. Because many financial institutions do not handle small special needs trusts, or charge fees that are not cost-effective for modest trusts, pooled trusts can give families access to highly skilled trustees. Funds remaining at the beneficiary’s death are typically divided between Medicaid and the nonprofit entity.<sup>51</sup>

Similar to special needs trusts, pooled trusts must be established in a way that complies with federal law.<sup>52</sup> Specifically, a pooled trust must:

- Contain the assets of an individual of any age who has a disability that makes him or her substantially unable to work;<sup>53</sup>
- Be established for the benefit of the individual;
- Be established and managed by a nonprofit association;
- Maintain a separate account for each beneficiary but pool the funds for investment and management purposes;
- Be established by the parent, grandparent, or legal guardian of the individual, by the individual, or by a court; and
- Reimburse the state for all of the medical assistance paid on behalf of the individual from any remaining assets upon the individual’s death to the extent the funds are not retained by the trust.<sup>54</sup>

## Effect of the Bill

The bill provides legislative intent and specifies that intent is to codify and clarify existing common law and Florida case law which recognizes that the parents of a dependent adult child (DAC) have an obligation to support that child after he or she turns 18. The bill specifies that it is the intent of the legislature to provide a framework of procedures by which a court must establish support for a DAC. The bill codifies the common law obligation of a parent to support a DAC after he or she reaches the age of majority. The bill defines the term “dependent adult child” to mean an unmarried adult who is incapable of self-support as a result of physical or mental incapacity that began before the person reached the age of 18.

The bill specifies that any support for a DAC must be established in a civil proceeding filed in the circuit court within the county in which the DAC resides. The bill also identifies specific DAC support guidelines the court must consider and seeks to create a consistent method for handling such matters in courts throughout the state.

Further, the bill specifies who may bring an action to establish support:

- The DAC;
- The DAC’s agent under a durable power of attorney;
- The DAC’s guardian or guardian advocate; or

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> 42 U.S.C. s. 1396p(d)(4)(C).

<sup>53</sup> 42 U.S.C. s. 1382c(a)(3).

<sup>54</sup> *Id.*

- A parent or another person on behalf of the DAC.

The bill also specifies that such support payments ordered after the DAC reaches the age of 18 must be made directly to the DAC or a court-appointed guardian advocate, guardian, or agent under a durable power of attorney and permits a portion of the support to be placed in a special needs trust or pooled trust for the DAC's benefit.

The bill specifies that an action to establish support for a DAC may be filed at any time after the DAC turns 17 years and 6 months. However, the action may be filed earlier if a court order for support was established prior to the DAC reaching the age of majority. Further, in a case where a court already has continuing jurisdiction over support from a child support case, the parties are permitted to extend support past the age of majority by written agreement. If the parties do not agree to extend support for the DAC, support must then be established in a separate support proceeding; it cannot be established under the continuing jurisdiction of the minor's child support case.

The bill prohibits the Department of Revenue from filing a petition to establish support for a DAC or to modify or enforce a support order for a DAC. The bill declares the scope of the bill is limited to support orders for DACs.

The bill clarifies that the support guidelines for a minor child under s. 61.29, F.S. do not apply to the calculation of support for a DAC; instead, the bill creates s. 61.1255, a more specific set of guidelines for calculating support for a DAC. In calculating support to be paid after a DAC reaches the age of 18, a court must consider all of the following factors:

- The DAC's income and assets.
- Any existing or future needs of the DAC which are directly related to his or her mental or physical incapacity and the substantial care and personal supervision directly required by or related to that incapacity.
- Whether a parent pays for or will pay for the care or supervision of the DAC or provides or will provide substantial care or personal supervision to the DAC.
- The financial resources available to each parent for the support, care, and supervision of the DAC.
- Any other financial resources or other resources or programs available for the support, care, and supervision of the DAC.

The bill further requires a court to consider any state or federal programs or benefits that the DAC is currently receiving and the effect that ordering support would have on his or her continued eligibility for such programs. As such, the bill specifies that a court may assign a portion of the support payment to be placed in a special needs trust or a pooled trust established for the DAC. The bill prohibits a court from ordering support that will cause the DAC to be ineligible for programs he or she is currently participating in, or programs and services for which he or she is reasonably expected to become eligible to participate in after turning 18.

The bill clarifies that if a guardian advocate is appointed only to receive periodic payments pursuant to s. 61.1255, F.S., there is no requirement that an attorney represent the DAC. The bill permits a petition to appoint a guardian advocate to include a request for the authority to bring a civil action in circuit court to establish periodic payments from either or both parents of the dependent adult child for the support, care, maintenance, education, or other needs of the DAC. The bill also allows a guardian to petition the court for the authority to bring a civil suit in circuit court to establish periodic payments from the parents of the DAC for the support, care, maintenance, education, and any other needs of the DAC if not otherwise provided for in the guardianship plan. Further, the bill requires the amount of support for the DAC to be determined pursuant to s. 61.31, F.S.

Under the bill, any modifications and enforcement of child support, time-sharing, and support for a DAC must be made in accordance with the requirements established for regular child support under chapter 61. The bill assigns jurisdiction over a DAC and defines the court's role in such a proceeding. The bill

further specifies that no obligation or duty is conferred on a guardian advocate or guardian to pursue support for the person with a developmental disability.

The bill was approved by the Governor on June 12, 2023, ch. 2023-213, L.O.F., and will become effective on July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None. However, the bill may increase the caseload for circuit courts.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an impact on the private sector by creating a statutory obligation for a parent or parents to financially support their dependent adult child after he or she turns 18. This may create a significant financial burden on parents of DACs. However, the guidelines created in the bill take into account the parent or parents' ability to pay financial support, which may limit the impact on low-income parents of DACs.

### D. FISCAL COMMENTS:

None.