

1 A bill to be entitled
2 An act relating to guardianship proceedings; creating
3 s. 744.1065, F.S.; authorizing a court to refer
4 guardianship matters to mediation or alternative
5 dispute resolution under certain circumstances;
6 amending ss. 744.107 and 744.1075, F.S.; authorizing a
7 court to appoint the office of criminal conflict and
8 civil regional counsel as a court monitor in
9 guardianship proceedings; amending s. 744.108, F.S.;
10 providing that fees and costs incurred by an attorney
11 who has rendered services to a ward in compensation
12 proceedings are payable from guardianship assets;
13 providing that expert testimony is not required in
14 proceedings to determine compensation for an attorney
15 or guardian; requiring a person offering expert
16 testimony to provide notice to interested persons;
17 providing that expert witness fees are recoverable by
18 the prevailing interested person; amending s.
19 744.3025, F.S.; providing that a court may appoint a
20 guardian ad litem to represent a minor if necessary to
21 protect the minor's interest in a settlement;
22 providing that a settlement of a minor's claim is
23 subject to certain confidentiality provisions;
24 amending s. 744.3031, F.S.; requiring notification of
25 an alleged incapacitated person and such person's
26 attorney of a petition for appointment of an emergency

27 temporary guardian before a hearing on the petition
28 commences; amending s. 744.309, F.S.; providing that a
29 business entity may act as guardian of a person;
30 amending s. 744.3115, F.S.; directing the court to
31 specify authority for health care decisions with
32 respect to a ward's advance directive; amending s.
33 744.312, F.S.; prohibiting a court from giving
34 preference to the appointment of certain persons as
35 guardians; providing requirements for the appointment
36 of professional guardians; amending s. 744.331, F.S.;
37 directing the court to consider certain factors when
38 determining incapacity; requiring that the examining
39 committee be paid from state funds as court-appointed
40 expert witnesses if a petition for incapacity is
41 dismissed; requiring that a petitioner reimburse the
42 state for such expert witness fees if the court finds
43 the petition to have been filed in bad faith; amending
44 s. 744.344, F.S.; providing conditions under which the
45 court is authorized to appoint an emergency temporary
46 guardian; amending s. 744.345, F.S.; revising
47 provisions relating to letters of guardianship;
48 creating s. 744.359, F.S.; prohibiting abuse, neglect,
49 or exploitation of a ward by a guardian; requiring
50 reporting thereof to the Department of Children and
51 Families central abuse hotline; providing for
52 interpretation; amending s. 744.361, F.S.; providing

53 additional powers and duties of a guardian; amending
 54 s. 744.367, F.S.; revising the period during which a
 55 guardian must file an annual guardianship plan with
 56 the court; amending s. 744.369, F.S.; providing for
 57 the continuance of a guardian's authority to act under
 58 an expired annual report under certain circumstances;
 59 amending s. 744.3715, F.S.; providing that an
 60 interested party may petition the court regarding a
 61 guardian's failure to comply with the duties of a
 62 guardian; amending s. 744.464, F.S.; establishing the
 63 burden of proof for determining restoration of
 64 capacity of a ward in pending guardianship cases;
 65 requiring a court to advance such cases on the
 66 calendar; providing applicability; providing an
 67 effective date.

68
 69 Be It Enacted by the Legislature of the State of Florida:

70
 71 Section 1. Section 744.1065, Florida Statutes, is created
 72 to read:

73 744.1065 Mediation; alternative dispute resolution.—At any
 74 time, the court may, upon its own motion or the motion of an
 75 interested person, refer a matter under the jurisdiction of this
 76 chapter to mediation or alternative dispute resolution if the
 77 court finds that mediation or alternative dispute resolution is
 78 in the best interests of the alleged incapacitated person, ward,

79 | or minor.

80 | Section 2. Subsection (5) is added to section 744.107,
81 | Florida Statutes, to read:

82 | 744.107 Court monitors.—

83 | (5) The court may appoint the office of criminal conflict
84 | and civil regional counsel as monitor if the ward is indigent.

85 | Section 3. Subsection (6) is added to section 744.1075,
86 | Florida Statutes, to read:

87 | 744.1075 Emergency court monitor.—

88 | (6) The court may appoint the office of criminal conflict
89 | and civil regional counsel as monitor if the ward is indigent.

90 | Section 4. Subsections (5) and (8) of section 744.108,
91 | Florida Statutes, are amended, and subsection (9) is added to
92 | that section, to read:

93 | 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees
94 | and expenses.—

95 | (5) All petitions for guardian ~~guardian's~~ and attorney
96 | ~~attorney's~~ fees and expenses must be accompanied by an itemized
97 | description of the services performed for the fees and expenses
98 | sought to be recovered.

99 | (8) When court proceedings are instituted to review or
100 | determine a guardian's or an attorney's fees under subsection
101 | (2), such proceedings are part of the guardianship
102 | administration process and the costs, including costs and
103 | attorney fees for the guardian's attorney, an attorney appointed
104 | under s. 744.331(2), or an attorney who has rendered services to

105 the ward, shall be determined by the court and paid from the
106 assets of the guardianship estate unless the court finds the
107 requested compensation under subsection (2) to be substantially
108 unreasonable.

109 (9) The court may determine that a request for
110 compensation by the guardian, the guardian's attorney, a person
111 employed by the guardian, an attorney appointed under s.
112 744.331(2), or an attorney who has rendered services to the
113 ward, is reasonable without receiving expert testimony. A person
114 or party may offer expert testimony for or against a request for
115 compensation after giving notice to interested persons.
116 Reasonable expert witness fees shall be awarded by the court and
117 paid from the assets of the guardianship estate to the
118 prevailing interested person.

119 Section 5. Section 744.3025, Florida Statutes, is amended
120 to read:

121 744.3025 Claims of minors.—

122 (1) (a) The court may appoint a guardian ad litem to
123 represent the minor's interest before approving a settlement of
124 the minor's portion of the claim in a ~~any~~ case in which a minor
125 has a claim for personal injury, property damage, wrongful
126 death, or other cause of action in which the gross settlement of
127 the claim exceeds \$15,000 if the court believes a guardian ad
128 litem is necessary to protect the minor's interest.

129 (b) Except as provided in paragraph (e), the court shall
130 appoint a guardian ad litem to represent the minor's interest

131 before approving a settlement of the minor's claim in a ~~any~~ case
132 in which the gross settlement involving a minor equals or
133 exceeds \$50,000.

134 (c) The appointment of the guardian ad litem must be
135 without the necessity of bond or notice.

136 (d) The duty of the guardian ad litem is to protect the
137 minor's interests as described in the Florida Probate Rules.

138 (e) A court need not appoint a guardian ad litem for the
139 minor if a guardian of the minor has previously been appointed
140 and that guardian has no potential adverse interest to the
141 minor. ~~A court may appoint a guardian ad litem if the court
142 believes a guardian ad litem is necessary to protect the
143 interests of the minor.~~

144 (2) Unless waived, the court shall award reasonable fees
145 and costs to the guardian ad litem to be paid out of the gross
146 proceeds of the settlement.

147 (3) A settlement of a claim pursuant to this section is
148 subject to the confidentiality provisions of this chapter.

149 Section 6. Subsections (2) through (8) of section
150 744.3031, Florida Statutes, are renumbered as subsections (3)
151 through (9), respectively, and a new subsection (2) is added to
152 that section, to read:

153 744.3031 Emergency temporary guardianship.—

154 (2) Notice of filing of the petition for appointment of an
155 emergency temporary guardian and a hearing on the petition must
156 be served on the alleged incapacitated person and on the alleged

157 incapacitated person's attorney at least 24 hours before the
 158 hearing on the petition is commenced, unless the petitioner
 159 demonstrates that substantial harm to the alleged incapacitated
 160 person would occur if the 24-hour notice is given.

161 Section 7. Paragraph (a) of subsection (1) of section
 162 744.309, Florida Statutes, is amended to read:

163 744.309 Who may be appointed guardian of a resident ward.—

164 (1) RESIDENT.—

165 (a) Any resident of this state who is sui juris and is 18
 166 years of age or older, or a business entity that has met the
 167 registration requirements of s. 744.1083, is qualified to act as
 168 guardian of a ward.

169 Section 8. Section 744.3115, Florida Statutes, is amended
 170 to read:

171 744.3115 Advance directives for health care.—In each
 172 proceeding in which a guardian is appointed under this chapter,
 173 the court shall determine whether the ward, prior to incapacity,
 174 has executed any valid advance directive under chapter 765. If
 175 any advance directive exists, the court shall specify in its
 176 order and letters of guardianship what authority, if any, the
 177 guardian shall exercise over the ward with regard to health care
 178 decisions and what authority, if any, the surrogate shall
 179 continue to exercise over the ward with regard to health care
 180 decisions ~~surrogate~~. Pursuant to the grounds listed in s.
 181 765.105, the court, upon its own motion, may, with notice to the
 182 surrogate and any other appropriate parties, modify or revoke

183 the authority of the surrogate to make health care decisions for
 184 the ward. For purposes of this section, the term "health care
 185 decision" has the same meaning as in s. 765.101.

186 Section 9. Section 744.312, Florida Statutes, is reordered
 187 and amended to read:

188 744.312 Considerations in appointment of guardian.—

189 (1)~~(4)~~ If the person designated is qualified to serve
 190 pursuant to s. 744.309, the court shall appoint any standby
 191 guardian or preneed guardian, unless the court determines that
 192 appointing such person is contrary to the best interests of the
 193 ward.

194 (2)~~(1)~~ If a guardian cannot be appointed under subsection
 195 (1) ~~Subject to the provisions of subsection (4)~~, the court may
 196 appoint any person who is fit and proper and qualified to act as
 197 guardian, whether related to the ward or not.

198 ~~(2)~~ The court shall give preference to the appointment of
 199 a person who:

- 200 (a) Is related by blood or marriage to the ward;
- 201 (b) Has educational, professional, or business experience
- 202 relevant to the nature of the services sought to be provided;
- 203 (c) Has the capacity to manage the financial resources
- 204 involved; or
- 205 (d) Has the ability to meet the requirements of the law
- 206 and the unique needs of the individual case.

207 (3) The court shall also:

- 208 (a) Consider the wishes expressed by an incapacitated

209 | person as to who shall be appointed guardian.~~†~~

210 | (b) Consider the preference of a minor who is age 14 or
211 | over as to who should be appointed guardian.~~†~~

212 | (c) Consider any person designated as guardian in any will
213 | in which the ward is a beneficiary.

214 | (4) The court may not give preference to the appointment
215 | of a person under subsection (2) solely based on the fact that
216 | such person was appointed by the court to serve as an emergency
217 | temporary guardian. This limitation applies only when an
218 | interested person objects to appointment of the emergency
219 | temporary guardian as a permanent guardian. This limitation does
220 | not apply to a standby guardian or to a preneed guardian.

221 | (5) Appointment of professional guardians by the court
222 | shall be on a rotating basis of professional guardians deemed
223 | qualified by the chief judge of the circuit. However, the court
224 | may appoint a professional guardian without reference to the
225 | rotation when the special requirements of the guardianship
226 | demand that the court appoint a guardian with special talent or
227 | specific prior experience. The court must make specific findings
228 | of fact that justify a finding that there are special
229 | requirements requiring an appointment without reference to the
230 | rotation.

231 | (6) An emergency temporary guardian who is a professional
232 | guardian may not be appointed as the permanent guardian of a
233 | ward. This limitation applies only when an interested person
234 | objects to appointment of the emergency temporary guardian as a

235 permanent guardian. This limitation does not apply to a standby
236 guardian or to a preneed guardian. The court may waive this
237 limitation only when the special requirements of the
238 guardianship demand that the court appoint that professional
239 guardian because he or she has special talent or specific prior
240 experience. The court must make specific findings of fact that
241 justify a finding that there are special requirements requiring
242 an appointment without reference to this limitation.

243 Section 10. Subsection (6) and paragraph (c) of subsection
244 (7) of section 744.331, Florida Statutes, are amended to read:

245 744.331 Procedures to determine incapacity.—

246 (6) ORDER DETERMINING INCAPACITY.—If, after making
247 findings of fact on the basis of clear and convincing evidence,
248 the court finds that a person is incapacitated with respect to
249 the exercise of a particular right, or all rights, the court
250 shall enter a written order determining such incapacity. In
251 determining incapacity, the court shall consider the person's
252 unique needs and abilities and may only remove those rights that
253 the court finds the person is incapable of exercising. A person
254 is determined to be incapacitated only with respect to those
255 rights specified in the order.

256 (a) The court shall make the following findings:

- 257 1. The exact nature and scope of the person's
258 incapacities;
- 259 2. The exact areas in which the person lacks capacity to
260 make informed decisions about care and treatment services or to

261 meet the essential requirements for her or his physical or
262 mental health or safety;

263 3. The specific legal disabilities to which the person is
264 subject; and

265 4. The specific rights that the person is incapable of
266 exercising.

267 (b) When an order determines that a person is incapable of
268 exercising delegable rights, the court must consider and find
269 whether there is an alternative to guardianship that will
270 sufficiently address the problems of the incapacitated person. ~~A~~
271 ~~guardian must be appointed to exercise the incapacitated~~
272 ~~person's delegable rights unless the court finds there is an~~
273 ~~alternative.~~ A guardian may not be appointed if the court finds
274 there is an alternative to guardianship which will sufficiently
275 address the problems of the incapacitated person. If the court
276 finds there is not an alternative to guardianship that
277 sufficiently addresses the problems of the incapacitated person,
278 a guardian must be appointed to exercise the incapacitated
279 person's delegable rights.

280 (c) In determining that a person is totally incapacitated,
281 the order must contain findings of fact demonstrating that the
282 individual is totally without capacity to care for herself or
283 himself or her or his property.

284 (d) An order adjudicating a person to be incapacitated
285 constitutes proof of such incapacity until further order of the
286 court.

287 (e) After the order determining that the person is
 288 incapacitated has been filed with the clerk, it must be served
 289 on the incapacitated person. The person is deemed incapacitated
 290 only to the extent of the findings of the court. The filing of
 291 the order is notice of the incapacity. An incapacitated person
 292 retains all rights not specifically removed by the court.

293 (f) Upon the filing of a verified statement by an
 294 interested person stating:

295 1. That he or she has a good faith belief that the alleged
 296 incapacitated person's trust, trust amendment, or durable power
 297 of attorney is invalid; and

298 2. A reasonable factual basis for that belief,
 299
 300 the trust, trust amendment, or durable power of attorney shall
 301 not be deemed to be an alternative to the appointment of a
 302 guardian. The appointment of a guardian does not limit the
 303 court's power to determine that certain authority granted by a
 304 durable power of attorney is to remain exercisable by the agent
 305 ~~attorney in fact~~.

306 (7) FEES.—

307 (c) If the petition is dismissed or denied:~~r~~

308 1. The fees of the examining committee shall be paid upon
 309 court order as expert witness fees under s. 29.004(6).

310 2. Costs and attorney ~~attorney's~~ fees of the proceeding
 311 may be assessed against the petitioner if the court finds the
 312 petition to have been filed in bad faith. The petitioner shall

313 also reimburse the state courts system for any amounts paid
314 under subparagraph 1. upon such a finding.

315 Section 11. Subsection (4) of section 744.344, Florida
316 Statutes, is amended to read:

317 744.344 Order of appointment.—

318 (4) If a petition for the appointment of a guardian has
319 not been filed or ruled upon at the time of the hearing on the
320 petition to determine capacity, the court may appoint an
321 emergency temporary guardian in the manner and for the purposes
322 specified in s. 744.3031.

323 Section 12. Section 744.345, Florida Statutes, is amended
324 to read:

325 744.345 Letters of guardianship.—Letters of guardianship
326 shall be issued to the guardian and shall specify whether the
327 guardianship pertains to the person, or the property, or both,
328 of the ward. The letters must state whether the guardianship is
329 plenary or limited, and, if limited, the letters must state the
330 powers and duties of the guardian. ~~If the guardianship is~~
331 ~~limited,~~ The letters shall state whether or not and to what
332 extent the guardian is authorized to act on behalf of the ward
333 with regard to any advance directive previously executed by the
334 ward.

335 Section 13. Section 744.359, Florida Statutes, is created
336 to read:

337 744.359 Abuse, neglect, or exploitation by a guardian.—

338 (1) A guardian may not abuse, neglect, or exploit a ward.

339 (2) A guardian has committed exploitation when the
 340 guardian:
 341 (a) Commits fraud in obtaining appointment as a guardian.
 342 (b) Abuses his or her powers.
 343 (c) Wastes, embezzles, or intentionally mismanages the
 344 assets of the ward.
 345 (3) A person who believes that a guardian is abusing,
 346 neglecting, or exploiting a ward shall report the incident to
 347 the central abuse hotline of the Department of Children and
 348 Families.
 349 (4) This section shall be interpreted in conformity with
 350 s. 825.103.
 351 Section 14. Section 744.361, Florida Statutes, is amended
 352 to read:
 353 744.361 Powers and duties of guardian.—
 354 (1) The guardian of an incapacitated person is a fiduciary
 355 and may exercise only those rights that have been removed from
 356 the ward and delegated to the guardian. The guardian of a minor
 357 shall exercise the powers of a plenary guardian.
 358 (2) The guardian shall act within the scope of the
 359 authority granted by the court and as provided by law.
 360 (3) The guardian shall act in good faith.
 361 (4) A guardian may not act in a manner that is contrary to
 362 the ward's best interests under the circumstances.
 363 (5) A guardian who has special skills or expertise, or is
 364 appointed in reliance upon the guardian's representation that

365 the guardian has special skills or expertise, shall use those
366 special skills or expertise when acting on behalf of the ward.

367 ~~(6)(2)~~ The guardian shall file an initial guardianship
368 report in accordance with s. 744.362.

369 ~~(7)(3)~~ The guardian shall file a guardianship report
370 annually in accordance with s. 744.367.

371 ~~(8)(4)~~ The guardian of the person shall implement the
372 guardianship plan.

373 ~~(9)(5)~~ When two or more guardians have been appointed, the
374 guardians shall consult with each other.

375 ~~(10)(6)~~ A guardian who is given authority over any
376 property of the ward shall:

377 (a) Protect and preserve the property and invest it
378 prudently as provided in chapter 518, apply it as provided in s.
379 744.397, and keep clear, distinct, and accurate records of the
380 administration of the ward's property ~~account for it faithfully.~~

381 (b) Perform all other duties required of him or her by
382 law.

383 (c) At the termination of the guardianship, deliver the
384 property of the ward to the person lawfully entitled to it.

385 ~~(11)(7)~~ The guardian shall observe the standards in
386 dealing with the guardianship property that would be observed by
387 a prudent person dealing with the property of another, ~~and, if~~
388 ~~the guardian has special skills or is named guardian on the~~
389 ~~basis of representations of special skills or expertise, he or~~
390 ~~she is under a duty to use those skills.~~

391 ~~(12)(8)~~ The guardian, if authorized by the court, shall
392 take possession of all of the ward's property and of the rents,
393 income, issues, and profits from it, whether accruing before or
394 after the guardian's appointment, and of the proceeds arising
395 from the sale, lease, or mortgage of the property or of any
396 part. All of the property and the rents, income, issues, and
397 profits from it are assets in the hands of the guardian for the
398 payment of debts, taxes, claims, charges, and expenses of the
399 guardianship and for the care, support, maintenance, and
400 education of the ward or the ward's dependents, as provided for
401 under the terms of the guardianship plan or by law.

402 (13) Recognizing that every individual has unique needs
403 and abilities, a guardian who is given authority over a ward's
404 person shall, as appropriate under the circumstances:

405 (a) Consider the expressed desires of the ward as known by
406 the guardian when making decisions that affect the ward.

407 (b) Allow the ward to maintain contact with family and
408 friends unless the guardian believes that such contact may cause
409 harm to the ward.

410 (c) Not restrict the physical liberty of the ward more
411 than reasonably necessary to protect the ward or another person
412 from serious physical injury, illness, or disease.

413 (d) Assist the ward in developing or regaining his or her
414 own capacity, if medically possible.

415 (e) Notify the court if the guardian believes that the
416 ward has regained capacity and that one or more of the rights

417 that have been removed should be restored to the ward.

418 (f) To the extent applicable, make provision for the
419 medical, mental, rehabilitative, or personal care services for
420 the welfare of the ward.

421 (g) To the extent applicable, acquire a clear
422 understanding of the risks and benefits of a recommended course
423 of health care treatment before making a health care decision.

424 (h) Evaluate the ward's medical and health care options,
425 financial resources, and desires when making residential
426 decisions that are best suited for the current needs of the
427 ward.

428 (i) Advocate on behalf of the ward in institutional and
429 other residential settings.

430 (14)-(9) A professional guardian must ensure that each of
431 the guardian's wards is personally visited by the guardian or
432 one of the guardian's professional staff at least once each
433 calendar quarter. During the personal visit, the guardian or the
434 guardian's professional staff person shall assess:

435 (a) The ward's physical appearance and condition.

436 (b) The appropriateness of the ward's current living
437 situation.

438 (c) The need for any additional services and the necessity
439 for continuation of existing services, taking into consideration
440 all aspects of social, psychological, educational, direct
441 service, health, and personal care needs.

442 (d) The nature and extent of visitation and communication

443 with the ward's family and friends.

444

445 This subsection does not apply to a professional guardian who
446 has been appointed only as guardian of the property.

447 Section 15. Subsection (1) of section 744.367, Florida
448 Statutes, is amended to read:

449 744.367 Duty to file annual guardianship report.—

450 (1) Unless the court requires filing on a calendar-year
451 basis, each guardian of the person shall file with the court an
452 annual guardianship plan at least 60 days, but no more than
453 ~~within~~ 90 days, before ~~after~~ the last day of the anniversary
454 month that the letters of guardianship were signed, and the plan
455 must cover the coming fiscal year, ending on the last day in
456 such anniversary month. If the court requires calendar-year
457 filing, the guardianship plan for the forthcoming calendar year
458 must be filed on or after September 1 but no later than December
459 1 of the current year ~~before April 1 of each year.~~

460 Section 16. Subsection (8) of section 744.369, Florida
461 Statutes, is amended to read:

462 744.369 Judicial review of guardianship reports.—

463 (8) The approved report constitutes the authority for the
464 guardian to act in the forthcoming year. The powers of the
465 guardian are limited by the terms of the report. The annual
466 report may not grant additional authority to the guardian
467 without a hearing, as provided for in s. 744.331, to determine
468 that the ward is incapacitated to act in that matter. Unless the

469 court orders otherwise, the guardian may continue to act under
470 authority of the last-approved report until the forthcoming
471 year's report is approved.

472 Section 17. Subsection (1) of section 744.3715, Florida
473 Statutes, is amended to read:

474 744.3715 Petition for interim judicial review.—

475 (1) At any time, any interested person, including the
476 ward, may petition the court for review alleging that the
477 guardian is not complying with the guardianship plan, ~~or~~ is
478 exceeding his or her authority under the guardianship plan, is
479 acting in a manner contrary to s. 744.361, is denying visitation
480 between the ward and his or her relatives in violation of s.
481 744.361(13), or ~~and the guardian~~ is not acting in the best
482 interest of the ward. The petition for review must state the
483 nature of the objection to the guardian's action or proposed
484 action. Upon the filing of any such petition, the court shall
485 review the petition and act upon it expeditiously.

486 Section 18. Paragraphs (a) and (b) of subsection (3) of
487 section 744.464, Florida Statutes, are amended, and subsection
488 (4) is added to that section, to read:

489 744.464 Restoration to capacity.—

490 (3) ORDER OF RESTORATION.—

491 (a) If no objections are filed, and the court is satisfied
492 that ~~with~~ the medical examination establishes by a preponderance
493 of the evidence that restoration of all or some of the ward's
494 rights is appropriate, the court shall enter an order of

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495 restoration of capacity, restoring all or some of the rights
496 which were removed from the ward in accordance with those
497 findings. ~~The order must be issued within 30 days after the~~
498 ~~medical report is filed.~~

499 (b) At the conclusion of a hearing, conducted pursuant to
500 s. 744.1095, the court shall make specific findings of fact and,
501 based on a preponderance of the evidence, enter an order either
502 denying the suggestion of capacity or restoring all or some of
503 the rights which were removed from the ward. The ward has the
504 burden of proving by a preponderance of the evidence that the
505 restoration of capacity is warranted.

506 (4) TIMELINESS OF HEARING.—The court shall give priority
507 to any suggestion of capacity and shall advance the cause on the
508 calendar.

509 Section 19. The amendments made by this act apply to all
510 proceedings pending on the effective date of this act.

511 Section 20. This act shall take effect upon becoming a
512 law.