

**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 Health and Human Services Appropriations Committee

BILL: CS/CS/SB 688

INTRODUCER: Committee on Health and Human Services Appropriations, Judiciary Committee, Senator Crist, and others

SUBJECT: Guardian Advocates for Persons with Developmental Disabilities

DATE: April 22, 2008 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	<b>Favorable</b>
2.	Daniell	Maclure	JU	<b>Fav/CS</b>
3.	Fabricant	Peters	HA	<b>Fav/CS</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes  
 B. AMENDMENTS.....  Technical amendments were recommended  
 Amendments were recommended  
 Significant amendments were recommended

**I. Summary:**

This bill provides substantive changes relating to the appointment of guardian advocates for persons with developmental disabilities. The bill provides that:

- The Florida Rules of Probate Procedure govern proceedings to appoint a guardian advocate;
- Guardian advocates are not required to be represented by an attorney unless required by the court or if the guardian advocate is delegated any rights regarding property other than the right to be the representative payee for government benefits;
- The relationship of a proposed guardian advocate with the providers of certain services of the person with developmental disabilities must be included in the petition for appointment;
- Notice of petition for appointment must be provided to the next of kin of the person with developmental disabilities, any health care surrogate, and any attorney in fact designated by a durable power of attorney, in addition to the person with developmental disabilities;

- Court-appointed attorneys for the person with a developmental disability are to be appointed within three days after a petition has been filed;
- Court-appointed attorneys must complete specified training unless waived by the court;
- Attorneys may not represent both the individual with a developmental disability and the guardian advocate or the person petitioning for appointment of a guardian advocate;
- Attorneys representing the individual with a developmental disability may not act as the guardian advocate;
- A court may not appoint a guardian advocate if the person with a developmental disability has an advance directive or a durable power of attorney that can provide an alternative that will sufficiently meet the needs of the person with a developmental disability;
- If the court determines that a guardian advocate is necessary regardless of the advanced directive or durable power of attorney, the court must specify in the order and the letters of guardian advocacy what authority the guardian advocate has over the health care surrogate or attorney in fact;
- The name of the person selected as the guardian advocate and the court's reasoning for the selection must be included in the court order;
- Any interested person may file a suggestion of restorations of rights, which must include evidentiary support, with the court; and
- The right of an individual with a developmental disability to consent to or refuse treatment is subject to the powers given to the guardian advocate or guardian.

The bill also makes technical changes to the statutes.

This bill substantially amends sections 393.12 and 393.13, Florida Statutes.

## II. Present Situation:

### Developmental Disabilities

Florida Statutes define “developmental disability” as a “disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”<sup>1</sup> Many individuals with developmental disabilities are able to manage their own personal and financial affairs without the intervention of a guardian. However, others recognize that at times they need help making critical decisions. Often the person who steps in to help is a family member.<sup>2</sup> The problem some family members, usually the parents, run into is that when the child turns 18 and becomes a legal adult, the parents are no longer entitled to the child's information due to privacy reasons.<sup>3</sup>

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<sup>1</sup> Section 393.063(9), F.S.

<sup>2</sup> GOVERNOR'S JOINT WORK GROUP ON GUARDIANSHIP AND THE DEVELOPMENTALLY DISABLED, AGENCY FOR PERSONS WITH DISABILITIES, *Final Report*, at 12 (Aug. 6, 2003), available at <http://apd.myflorida.com/news/docs/dd-needs-final-report-8-6-2003.pdf> (last visited March 19, 2008).

<sup>3</sup> Susan Sexton and Lisa Smith, *Guardianship Advocacy: Helping Developmentally Challenged Adults in the Community* (Feb. 21, 2008) (on file with the Senate Committee on Judiciary).

## Florida's Developmental Disabilities Prevention and Community Services Act

In 1977, the Legislature enacted ch. 393, F.S., referred to as the Developmental Disabilities Prevention and Community Services Act (the Act).<sup>4</sup> The initial goal of the Act was to “improve the quality of life of developmentally challenged adults by allowing a family member or other interested party the ability to act on their behalf in making certain decisions such as medical care.”<sup>5</sup> Chapter 393, F.S., authorizes services to be provided to persons with developmental disabilities, which are administered by the Agency for Persons with Disabilities.<sup>6</sup> In 2003, Governor Bush issued Executive Order No. 03-103, creating the Joint Work Group on Guardianship for the Developmentally Disabled, which was “charged with developing a recommended plan of action for facilitating the provision of guardians or guardian alternatives for individuals with developmental disabilities consistent with their right to self-determination.”<sup>7</sup>

### Guardianship

There are two main chapters of Florida law governing guardianships for persons with developmental disabilities: Chapter 744, F.S. (Guardianship), and Chapter 393, F.S. (Developmental Disabilities).

#### *Chapter 744, Florida Statutes*

The Florida Guardianship Law<sup>8</sup> “provides for the appointment of guardians of persons or property or both, to exercise rights for persons who lack the capacity to make knowing and willful decisions for themselves regarding health care, living conditions, financial considerations and/or property management.”<sup>9</sup> Before a guardian is appointed under ch. 744, F.S., a court must determine the incapacity of the person with developmental disabilities.<sup>10</sup> Section 744.3201, F.S., sets forth the requirements of a petition to determine incapacity. An examining committee comprised of at least three members is appointed to complete a comprehensive examination of the alleged incapacitated person, and then an adjudicatory hearing is held to determine incapacity of that individual.<sup>11</sup> A petition for appointment of a guardian must also be filed according to s. 744.334, F.S. Florida law provides that “the court may appoint any person who is fit and proper and qualified to act as a guardian, whether related to the ward or not.”<sup>12</sup> A guardian must

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<sup>4</sup> Chapter 2006-227, s. 8, Laws of Fla., repealed s. 393.061, F.S., which provided that ch. 393, F.S., would be known as the Developmental Disabilities Prevention and Community Services Act.

<sup>5</sup> Susan Sexton and Lisa Smith, *supra* note 3.

<sup>6</sup> See ch. 2004-267, Laws of Fla.

<sup>7</sup> *Final Report*, *supra* note 2, at 10.

<sup>8</sup> Chapter 744, F.S., is called the Florida Guardianship Law pursuant to s. 744.101, F.S.

<sup>9</sup> *Final Report*, *supra* note 2, at 22.

<sup>10</sup> See REAL PROPERTY, PROBATE, AND TRUST LAW SECTION OF THE FLORIDA BAR, *White Paper: Suggested Changes to § 393.12, Guardian Advocates for Developmentally Disabled Adults, SB 688, 1* (undated and unpublished manuscript on file with the Senate Committee on Judiciary); AGENCY FOR PERSONS WITH DISABILITIES, *Florida Statutes Related to Guardianship (Comparison of Chapter 393.12, F.S. with Chapter 744, F.S.)* (on file with the Senate Committee on Judiciary).

<sup>11</sup> Section 744.331, F.S.

<sup>12</sup> Section 744.312(1), F.S.

be 18 years old or older and a resident of the state of Florida.<sup>13</sup> A nonresident may serve as a guardian if the person is:

- Related by lineal consanguinity to the ward;
- A legally adopted child or adoptive parent of the ward;
- A spouse, brother, sister, uncle, aunt, niece, or nephew of the ward, or someone related by lineal consanguinity to any such person; or
- The spouse of a person otherwise qualified.<sup>14</sup>

As well as taking into consideration the express wishes of the incapacitated person, the court is supposed to give preference to the appointment of a person who:

- Is related by blood or marriage to the ward;
- Has educational, professional, or business experience relevant to the nature of the services sought;
- Has the capacity to manage the financial resources involved; or
- Has the ability to meet the requirements of the law and the unique needs of the individual case.<sup>15</sup>

In a proceeding to appoint a guardian, the court must determine if the ward, prior to incapacity, executed an advance directive.<sup>16</sup> If an advance directive exists and the court modifies or revokes the authority of the surrogate, the court must specify in its order and letters of guardianship what authority the guardian will exercise over the surrogate.<sup>17</sup>

Chapter 744, F.S., also specifies which people are not allowed to be appointed a guardian,<sup>18</sup> as well as establishes the powers and duties of the guardian.<sup>19</sup>

Section 744.464, F.S., provides that any interested person may file a suggestion of capacity with the court where the guardianship is pending. The court must appoint a physician to examine the ward and a report must be filed with the court within 20 days after the appointment. If an objection is timely filed or if the physician does not agree with the suggestion of capacity, the court must notice a hearing on the matter. After the hearing, the court can enter an order either denying the suggestion of capacity or restoring all or some of the rights that were removed from the ward. Also, if no objections are filed and the court is satisfied with the medical examination, the court can enter an order either denying the suggestion of capacity or restoring all or some of the rights that were removed from the ward. If the court does not restore all of the ward's rights, the order must state which rights are restored and a new guardianship report must be prepared.<sup>20</sup>

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<sup>13</sup> Section 744.309(1), F.S.

<sup>14</sup> Section 744.309(2), F.S.

<sup>15</sup> Section 744.312(2), F.S.

<sup>16</sup> Section 744.3115, F.S.

<sup>17</sup> If the court decides to modify or revoke the authority of the surrogate, the court must provide notice to the surrogate and any other appropriate parties. *Id.*

<sup>18</sup> Section 744.309(3), F.S.

<sup>19</sup> Section 744.361, F.S.

<sup>20</sup> Section 744.646, F.S.

*Section 393.12, Florida Statutes*

Section 393.12, F.S., was created to be a less restrictive alternative to the type of guardianship provided under ch. 744, F.S. Some advocates for persons with developmental disabilities prefer a guardian advocate to other forms of guardianship because the process does not require the adjudication of incapacity of the person and the associated cost of the procedural requirements of ch. 744, F.S.<sup>21</sup> A probate court may appoint a guardian advocate for a person with developmental disabilities if the person is competent, but lacks the ability to do some of the things necessary to care for himself, his property, or his estate.<sup>22</sup> A person with a developmental disability retains all legal rights except for those rights that have been granted to the guardian advocate.<sup>23</sup> According to the Advocacy Center for Persons with Disabilities, since there is no adjudication of incapacity, it is unclear whether or how an individual's rights are handled if the guardian advocate dies or becomes unable to serve.<sup>24</sup>

A petition to appoint a guardian advocate can be executed by any adult resident of Florida.<sup>25</sup> Each petition must contain the following information:

- The name, age, and present address of the petitioner and his or her relationship to the person with developmental disabilities;
- The name, age, county of residence, and present address of the person with developmental disabilities;
- A specific factual statement explaining why the developmentally disabled person needs a guardian advocate;
- A statement describing the exact areas in which the person lacks capacity to make informed decisions about his or her care;
- A statement explaining the legal disabilities to which the person is subject; and
- The name of the proposed guardian advocate and his or her relationship to the person with developmental disabilities.<sup>26</sup>

Notice of a petition to appoint a guardian advocate is currently provided to the person with the developmental disability, his or her parent(s), and anyone else upon the direction of the court.<sup>27</sup> The notice must be given verbally and in writing in the language of the person with the developmental disability and in English.<sup>28</sup>

Every person with a developmental disability, who is the subject of a petition to appoint a guardian advocate, must have legal representation.<sup>29</sup> The attorney can be selected by the developmentally disabled person or if the person cannot afford an attorney, the court is required

<sup>21</sup> See generally *Florida Statutes Related to Guardianship*, *supra* note 11.

<sup>22</sup> Section 393.12(2), F.S.

<sup>23</sup> Section 393.12(2)(g), F.S.

<sup>24</sup> ADVOCACY CENTER FOR PERSONS WITH DISABILITIES, *SB 688/HB 739 Bill Analysis*, 4 (2008) (on file with the Senate Committee on Judiciary).

<sup>25</sup> Section 393.12(2)(b), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> Section 393.12(2)(c), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Section 393.12(2)(d), F.S.

to appoint one.<sup>30</sup> According to the Agency for Persons with Disabilities (APD), the developmentally disabled person may currently elect to receive representation from the same attorney who represents the guardian advocate, or may choose separate representation.<sup>31</sup>

The Florida Probate Rules of Court require guardians to have legal representation.<sup>32</sup> According to the Advocacy Center for Persons with Disabilities, it is unclear whether guardian advocates are required by court rule to be represented by counsel.<sup>33</sup> Chapter 393, F.S., is silent regarding legal counsel for the guardian advocate.

Section 393.12(2)(h), F.S., provides that a guardian advocate may be a person or corporation qualified to act as a guardian. Section 744.312, F.S., gives additional direction and provides a list of preferences for appointment as follows:

- Is related by blood or marriage to the ward;
- Has educational, professional, or business experience relevant to the nature of the services sought;
- Has the capacity to manage the financial resources involved; or
- Has the ability to meet the requirements of the law and the unique needs of the individual case.<sup>34</sup>

The court is also required to consider the wishes expressed by an incapacitated person as to who shall be appointed guardian.<sup>35</sup>

At the hearing to determine the capacity of the person with developmental disabilities, the court must receive and consider all reports relevant to the person's disabilities, including the current individual family or support plan, the individual education plan, and any other professional reports documenting the condition and needs of the individual.<sup>36</sup> The person for whom a guardian advocate is to be appointed has the right to be present at the hearing and can present evidence.<sup>37</sup>

If the court determines a guardian advocate is necessary, an order must be issued determining the need for the guardian advocate. The order must include:

- The nature and scope of the person's incapacity;
- The exact areas the person lacks capacity to make informed decisions;
- The specific legal disabilities to which the person is subject; and
- The powers and duties of the guardian advocate.<sup>38</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> AGENCY FOR PERSONS WITH DISABILITIES, *2008 Bill Analysis*, 2 (Feb. 29, 2008) (on file with the Senate Committee on Judiciary).

<sup>32</sup> Fla. Prob. R. 5.030.

<sup>33</sup> ADVOCACY CENTER FOR PERSONS WITH DISABILITIES, *supra* note 22, at 1.

<sup>34</sup> Section 744.312(2), F.S.

<sup>35</sup> Section 744.312(3), F.S.

<sup>36</sup> Section 393.12(2)(e)4., F.S.

<sup>37</sup> Section 393.12(2)(e)3., F.S.

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

The guardian advocate appointed under s. 393.12, F.S., has the same powers, duties, and responsibilities as a guardian appointed under ch. 744, F.S. The guardian advocate's duties may be further defined by the court order. Guardian duties to the court include, but are not limited to, filing annual reports, guardianship plans, and an annual accounting of the ward's property over which the guardian has control. The annual accounting requires a full and correct account of the receipts and disbursements of all of the developmentally disabled individual's property controlled by the guardian, a statement of the individual's property on hand at the end of the accounting period, and a copy of the year-end statement of all of the individual's cash accounts.<sup>39</sup> The court can waive the annual accounting requirement if the person with developmental disabilities receives income only from Social Security benefits and the guardian advocate is the person's representative payee for the benefits.<sup>40</sup> This provision is duplicated in ch. 744, F.S.

### III. Effect of Proposed Changes:

#### Legal Representation

The bill adds language which provides that a guardian advocate does not need to have legal representation, unless specifically required by the court or if the guardian advocate is delegated any rights regarding property other than the right to be the representative payee for government benefits. This appears contrary to Florida Probate Rule 5.030(a), which requires that every guardian be represented by an attorney admitted to practice in Florida. According to the Real Property, Probate, and Trust Law Section of The Florida Bar, the purpose for requiring representation "is because the guardian advocate is exercising the rights of another person who has not been declared incapacitated, and the court seeks a safeguard to prevent abuse, neglect, or exploitation of the developmentally disabled adult."<sup>41</sup> A concern has been expressed that, although allowing guardian advocates to be unrepresented will eliminate a majority of legal costs related to appointing one; it may dilute the rights and protections of individuals with developmental disabilities.<sup>42</sup>

Current law provides that every person with a developmental disability who is the subject of a petition to appoint a guardian advocate must be represented by counsel.<sup>43</sup> The bill specifies that if the court appoints the attorney within three days after a petition is filed.

The bill requires that the appointed attorney complete a minimum of eight hours of education in guardianship. The education requirement may be waived for an attorney who has served as a court-appointed attorney in guardian advocate proceedings or as an attorney of record for guardian advocates for at least three years.

The bill prohibits an attorney representing a person with a developmental disability from also serving as the guardian advocate, counsel to the guardian advocate, or counsel for the person

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<sup>39</sup> Section 744.3678, F.S.

<sup>40</sup> Section 393.12(2)(h), F.S.

<sup>41</sup> *White Paper*, *supra* note 11, at 1.

<sup>42</sup> ADVOCACY CENTER FOR PERSONS WITH DISABILITIES, *supra* note 22, at 1-2.

<sup>43</sup> Section 393.12(2)(d), F.S.

petitioning for the appointment of a guardian advocate. This would eliminate any potential conflict in legal representation.

### **Selection of the Guardian Advocate**

The proceedings to appoint a guardian advocate are to be governed by the Florida Rules of Probate Procedure.

The bill prohibits the court from appointing a guardian advocate if the court finds that the person with developmental disabilities executed an advance directive or durable power of attorney that provides an alternative to the appointment of a guardian which sufficiently addresses the needs of the person.

If an interested person seeks to contest an advance directive or durable power of attorney executed by a person with a developmental disability, the interested person shall file a verified statement that includes the factual basis for the belief that the advance directive or durable power of attorney is invalid or does not sufficiently address the needs of the person for whom a guardian advocate is sought or that the person with authority under the advance directive or durable power of attorney is abusing his or her power.

If the court determines that a guardian advocate is needed, despite the advance directive or durable power of attorney, the court must specify in its order and letters of guardianship what authority the guardian advocate will have over the health care surrogate or attorney in fact. The court cannot suspend the powers of the attorney in fact unless it finds that the durable power of attorney is invalid or there has been an abuse of power. The bill appears to allow a court to override the wishes of the person with developmental disabilities that were set forth in the advance directive or durable power of attorney, if the court feels the person's needs would not be sufficiently covered.

### **Petition and Notice Requirements**

Current law requires that the name of the proposed guardian advocate, the relationship of that person to the person with developmental disabilities, and the reason why the person should be appointed be included within the petition to appoint a guardian advocate. This bill also requires that the relationship of the proposed guardian advocate with the providers of health care services, residential services, and other services to the person with developmental disabilities be included in the petition.

The bill requires that notice of the filing of the petition be given to the following people, as well as, the person with the developmental disability:

- The developmentally disabled person's next of kin;<sup>44</sup>
- A health care surrogate, if one has been appointed;

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<sup>44</sup> Section 744.102(14), F.S., defines "next of kin" as "those persons who would be heirs at law of the ward or alleged incapacitated person if the person were deceased and includes the lineal descendants of the ward or alleged incapacitated person."

- An attorney in fact designated in a durable power of attorney; and
- Any other person the court may direct.

### **Suggestion of Restoration of Rights**

The bill provides that any interested person may file a petition, which must include evidentiary support, with the court. If the petitioner is unable to provide evidentiary support because of lack of access to such information, the petitioner may state a good faith basis for the suggestion for the restoration of rights without attaching evidentiary support. If no evidentiary support is attached, the court is required to immediately set a hearing to inquire as to the reason and enter the needed orders to secure the required documents. The bill requires that the developmentally disabled person and his or her attorney be provided notice.

Counsel for the person with developmental disabilities must be appointed within three days after filing the petition. Notice of the filing must be sent to the person with developmental disabilities, the person's guardian advocate, the person's attorney, and any other interested person.

The bill appears to require a stricter standard for restoring a person's rights than is needed to appoint a guardian advocate for the person. A petition to restore the person's rights must include evidentiary support such as a signed statement from a medical, psychological, or psychiatric practitioner who has evaluated the person with developmental disabilities; however, in order to have a guardian advocate appointed for that person, such evidentiary support is not required.

If an objection is timely filed (within 20 days after service of the notice) or if a medical examination suggests that restoration of rights is not appropriate, the court must notice the matter for a hearing, and copies of the objection(s) must be served on the person with the developmental disability, the person's attorney, and the person's guardian advocate. At the end of the hearing, the court may either deny the petition or restore some or all of the person's rights. The order must state which rights are restored, and the letters of guardianship advocacy must be amended. Within 60 days after the order and amended letters of guardian advocacy are issued, the guardian advocate must amend the current plan and file a final accounting, if all property rights are restored to the person.

If no objections are filed and the court is satisfied with the evidentiary support attached to the petition, the court shall enter an order, within 30 days after the petition is filed, restoring the person's rights. If the court proceeds in this way, the bill does not require that a final accounting be prepared if the property rights of the individual are restored or that the current plan required under ch. 744, F.S., be amended to show that the individual's personal rights are restored.

### **Bill of Rights of Persons with Developmental Disabilities**

This bill amends s. 393.13, F.S., also known as the Bill of Rights of Persons with Developmental Disabilities, to provide that a person's right to consent to or refuse treatment is subject to the powers of a guardian advocate appointed under s. 393.12, F.S., or a guardian appointed under ch. 744, F.S. This change appears to clarify the role of the guardian advocate in decisions regarding treatment.

This bill provides an effective date of July 1, 2008.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Florida Probate Rule 5.030 states:

Every guardian and every personal representative, unless the personal representative remains the sole interested person, shall be represented by an attorney admitted to practice in Florida.

Article V, section 2(a) of the Florida Constitution provides that the Supreme Court shall adopt rules for the practice and procedure in all courts. The Legislature can repeal court rules by general law enacted by two-thirds vote of the membership of each house.

Since the bill provides that a guardian advocate does not have to be represented by an attorney unless required by the court, it raises questions about the possible infringement on the Supreme Court's powers enumerated in Article V, section 2. It is unclear whether the intent of the bill is to repeal Florida Probate Rule 5.030, in which case the bill would have to pass the Legislature by a two-thirds vote of each house.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By eliminating the requirement that guardian advocates be represented by counsel, the bill has the potential to eliminate a majority of legal costs related to gaining and providing guardian advocacy.

Persons filing the petition to appoint a guardian advocate may see an increased cost because the bill requires more people to be served notice of the petition.

C. **Government Sector Impact:**

The bill has no fiscal impact.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Committee on Health and Human Services Appropriations on April 22, 2008:**

The committee substitute:

- Removes the provision that a court may appoint a guardian advocate for a child adjudicated dependent;
- Removes the provision requiring that the appointment of a guardian advocate be made in accordance with s. 744.312 F.S.;
- Provides that a person being appointed or considered as a guardian advocate does not need legal representation unless the guardian advocate is delegated any rights regarding property other than the right to be the representative payee for government benefits;
- Provides that the provision stating that a guardian advocate does not need legal representation applies only to the guardian advocate appointment proceedings and is not an exercise of Legislative authority;
- Removes a provision that notice be given to DCF and a child's guardian ad litem or attorney if a petition seeks a guardian advocate for a dependent child;
- Removes the Office of Criminal Conflict and Civil Regional Counsel or a private attorney on the attorney registry compiled pursuant to s. 27.40, F.S. from being appointed by the court to represent a person with developmental disabilities;
- Provides that an interested person who wants to contest an advance directive or durable power of attorney, must file a verified statement that includes the factual basis for the belief that the advance directive or durable power of attorney is invalid or does not address the needs of the DD person;
- Reinstates Florida law allowing the court to waive the annual financial reporting requirement if the developmentally disabled person's only income is made up of governmental benefits and the guardian advocate is the representative payee.
- Removes a provision that if a court waived the annual accounting, then the guardian advocate must notify the court of any changes in the person's financial circumstances.
- Provides the court immediately set a hearing if no evidence is attached to a suggestion of restoration of rights to inquire as to the reason and enter orders to secure the required documents.

- Makes technical and conforming changes.

**CS by Judiciary on March 25, 2008:**

The committee substitute:

- Provides that a dependency court may appoint a guardian advocate for a dependent child;
- Adds that the relationship of the proposed guardian advocate with the providers of certain services of the person with developmental disabilities must be included in the petition for appointment;
- Requires the court to determine whether the person with a developmental disability has executed an advance directive or durable power of attorney, and provides procedures the court must follow if one has been executed;
- Requires that notice of the petition for a guardian advocate be given to the person with a developmental disability's next of kin, a health care surrogate, an attorney designated by a durable power of attorney, and, in certain circumstances, the Department of Children and Family Services and a dependent child's guardian ad litem or attorney;
- Provides that the court shall appoint an attorney for the person with developmental disabilities within three days after a petition has been filed;
- Includes a provision requiring the guardian advocate to notify the court of any changes in the person's financial circumstances if the court waives the annual accounting;
- Authorizes any interested person to file a petition with the court seeking restoration of the person with a developmental disability's rights and includes applicable procedures and requirements; and
- Makes technical and conforming changes.

**B. Amendments:**

None.