

742.108 Criminal penalties for false statements of paternity.

742.16 Expedited affirmation of parental status for gestational surrogacy.

742.107 Determining paternity of child with mother under 16 years of age when impregnated.—

(1) The Legislature intends to facilitate the criminal prosecution of persons 21 years of age or older who have impregnated a child under 16 years of age by ensuring that paternity is determined for a dependent child whose mother was impregnated while under 16 years of age.

(2) Whenever paternity has not been established for a dependent child whose mother was impregnated with the child while under 16 years of age, the mother shall be required to identify the father of the child and cooperate as provided in s. 409.2572, including Human Leukocyte Antigen or other scientific tests.

(3) Whenever the information provided by a mother who was impregnated while under 16 years of age indicates that the alleged father of the child was 21 years of age or older at the time of conception of the child, the Department of Revenue or the Department of Health and Rehabilitative Services shall advise the applicant or recipient of public assistance that she is required to cooperate with law enforcement officials in the prosecution of the alleged father.

(4) When the information provided by the applicant or recipient who was impregnated while under age 16 indicates that such person is the victim of child abuse as provided in s. 827.04(4), the Department of Revenue or the Department of Health and Rehabilitative Services shall notify the county sheriff's office or other appropriate agency or official and provide information needed to protect the child's health or welfare.

(5) The confidentiality of any records under this chapter, relating to determination of paternity, does not prohibit the sharing of information for the purpose of cooperating with an ongoing criminal investigation.

History.—s. 5, ch. 96-215.

Note.—The Department of Health and Rehabilitative Services was redesignated as the Department of Children and Family Services by s. 5, ch. 96-403, and the Department of Health was created by s. 8, ch. 96-403.

742.108 Criminal penalties for false statements of paternity.—Notwithstanding any other provision of law, any person who knowingly and willfully provides false information to the sheriff's office, other law enforcement agency, or governmental agency, or under oath regarding the paternity of a child in conjunction with an application for, or the receipt of, public assistance for a dependent child commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, in addition to remaining subject to any other civil or criminal penalties for perjury or making false statements which are applicable under other provisions of law.

History.—s. 6, ch. 96-215.

742.16 Expedited affirmation of parental status for gestational surrogacy.—

(1) Within 3 days after the birth of a child delivered of a gestational surrogate, the commissioning couple shall petition a court of competent jurisdiction for an expedited affirmation of parental status.

(2) After the petition is filed, the court shall fix a time and place for hearing the petition, which may be immediately after the filing of the petition. Notice of hearing shall be given as prescribed by the rules of civil procedure, and service of process shall be made as specified by law for civil actions.

(3) Upon a showing by the commissioning couple or the child or the gestational surrogate that privacy rights may be endangered, the court may order the names of the commissioning couple or the child or the gestational surrogate, or any combination thereof, to be deleted from the notice of hearing and from the copy of the petition attached thereto, provided the substantive rights of any person will not thereby be affected.

(4) Notice of the hearing shall be given by the commissioning couple to:

(a) The gestational surrogate.

(b) The treating physician of the assisted reproductive technology program.

(c) Any party claiming paternity.

(5) All hearings held in proceedings under this section shall be held in closed court without admittance of any person other than essential officers of the court, the parties, witnesses, and any persons who have received notice of the hearing.

(6) The commissioning couple or their legal representative shall appear at the hearing on the petition. At the conclusion of the hearing, after the court has determined that a binding and enforceable gestational surrogacy contract has been executed pursuant to s. 742.15 and that at least one member of the commissioning couple is the genetic parent of the child, the court shall enter an order stating that the commissioning couple are the legal parents of the child.

(7) When at least one member of the commissioning couple is the genetic parent of the child, the commissioning couple shall be presumed to be the natural parents of the child.

(8) Within 30 days after entry of the order, the clerk of the court shall prepare a certified statement of the order for the state registrar of vital statistics on a form provided by the registrar. The court shall thereupon enter an order requiring the Department of Health and Rehabilitative Services to issue a new birth certificate naming the commissioning couple as parents and requiring the department to seal the original birth certificate.

(9) All papers and records pertaining to the affirmation of parental status, including the original birth certificate, are confidential and exempt from the provisions of s. 119.07(1) and subject to inspection only upon order of the court. The court files, records, and papers shall be indexed only in the name of the petitioner, and the name of the child shall not be noted on any docket, index, or other record outside the court file.

History.—s. 2, ch. 93-237; s. 416, ch. 96-406.

Note.—The Department of Health and Rehabilitative Services was redesignated as the Department of Children and Family Services by s. 5, ch. 96-403, and the Department of Health was created by s. 8, ch. 96-403.

CHAPTER 744

GUARDIANSHIP

PART I

GENERAL PROVISIONS

744.102 Definitions.

744.108 Guardian's and attorney's fees and expenses.

744.102 Definitions.—As used in this chapter, the term:

(1) "Attorney for the alleged incapacitated person" means an attorney who represents the alleged incapacitated person. Such attorney shall represent the expressed wishes of the alleged incapacitated person to the extent it is consistent with the rules regulating The Florida Bar.

(2) "Clerk" means the clerk or deputy clerk of the court.

(3) "Corporate guardian" means a corporation authorized to exercise fiduciary or guardianship powers in this state and includes a nonprofit corporate guardian.

(4) "Court" means the circuit court.

(5) "Court monitor" means a person appointed by the court pursuant to s. 744.107 to provide the court with information concerning a ward.

(6) "Estate" means the property of a ward subject to administration.

(7) "Foreign guardian" means a guardian appointed in another state or country.

(8) "Guardian" means a person who has been appointed by the court to act on behalf of a ward's person or property, or both.

(a) "Limited guardian" means a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his person or property, or after the person has voluntarily petitioned for appointment of a limited guardian.

(b) "Plenary guardian" means a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his person or property.

(9) "Guardian ad litem" means a person who is appointed by the court having jurisdiction of the guardianship or a court in which a particular legal matter is pending to represent a ward in that proceeding.

(10) "Incapacitated person" means a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of such person.

(a) To "manage property" means to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

(b) To "meet essential requirements for health or safety" means to take those actions necessary to provide the health care, food, shelter, clothing, personal hygiene, or other care without which serious and imminent physical injury or illness is more likely than not to occur.

(11) "Minor" means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

(12) "Next of kin" means those persons who would be heirs at law of the ward or alleged incapacitated person if such person were deceased and includes the lineal descendants of such ward or alleged incapacitated person.

(13) "Nonprofit corporate guardian" means a nonprofit corporation organized for religious or charitable purposes and existing under the laws of this state.

(14) "Preneed guardian" means a person named in a written declaration to serve as guardian in the event of the incapacity of the declarant as provided in s. 744.3045.

(15) "Professional guardian" means any guardian who receives or has at any time received compensation for services rendered to more than two wards as their guardian. A person serving as a guardian for two or more relatives as defined in s. 744.309(2) is not considered a professional guardian.

(16) "Property" means both real and personal property or any interest in it and anything that may be the subject of ownership.

(17) "Standby guardian" means a person empowered to assume the duties of guardianship upon the death or adjudication of incapacity of the last surviving natural or appointed guardian.

(18) "Totally incapacitated" means incapable of exercising any of the rights enumerated in s. 744.3215(2) and (3).

(19) "Ward" means a person for whom a guardian has been appointed.

History.—s. 1, ch. 74-106; s. 2, ch. 75-222; s. 231, ch. 77-104; s. 1, ch. 79-221; s. 3, ch. 80-171; s. 4, ch. 89-96; s. 2, ch. 90-271; s. 1, ch. 96-354.

Note.—Created from former s. 744.03.

744.108 Guardian's and attorney's fees and expenses.—

(1) A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee for services rendered and reimbursement for costs incurred on behalf of the ward.

(2) When fees for a guardian or an attorney are submitted to the court for determination, the court shall consider the following criteria:

(a) The time and labor required;

(b) The novelty and difficulty of the questions involved and the skill required to perform the services properly;

(c) The likelihood that the acceptance of the particular employment will preclude other employment of the person;

(d) The fee customarily charged in the locality for similar services;

(e) The nature and value of the incapacitated person's property, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person;

(f) The results obtained;

(g) The time limits imposed by the circumstances;

(h) The nature and length of the relationship with the incapacitated person; and

(i) The experience, reputation, diligence, and ability of the person performing the service.

(3) In awarding fees to attorney guardians, the court must clearly distinguish between fees and expenses for legal services and fees and expenses for guardian services and must have determined that no conflict of interest exists.

(4) Fees for legal services may include customary and reasonable charges for work performed by legal assistants employed by and working under the direction of the attorney.

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

(6) A petition for fees or expenses may not be approved without prior notice to the guardian and to the ward, unless the ward is a minor or is totally incapacitated.

(7) A petition for fees shall include the period covered and the total amount of all prior fees paid or costs awarded to the petitioner in the guardianship proceeding currently before the court.

History.—ss. 18, 26, ch. 75-222; s. 11, ch. 89-96; s. 5, ch. 90-271; s. 2, ch. 96-354.

PART II

VENUE

744.202 Venue.

744.2025 Change of ward's residence.

744.202 Venue.—

(1) The venue in proceedings for declaration of incapacity shall be where the alleged incapacitated person resides or is found. The provisions of this section do not apply to veterans.

(2) The venue in proceedings for the appointment of a guardian shall be:

(a) If the incapacitated person is a resident of this state, in the county where the incapacitated person resides.

(b) If the incapacitated person is not a resident of this state, in any county in this state where property of the incapacitated person is located.

(c) If the incapacitated person is not a resident of this state and owns no property in this state, in the county where any debtor of the incapacitated person resides.

(3) When the residence of an incapacitated person is changed to another county, the guardian shall petition to have the venue of the guardianship changed to the county of the acquired residence, except as provided in s. 744.2025.

(4) If an incapacitated person is a resident of this state and is found in a county other than the county of residence, the venue for declaration of incapacity and for the appointment of a guardian may be the county where the incapacitated person is found. Upon transfer of the incapacitated person to the county of residence, the guardian may have the venue of the guardianship

changed to the county of residence and a successor guardian may be appointed.

History.—s. 1, ch. 74-106; s. 5, ch. 75-222; s. 15, ch. 89-96; s. 7, ch. 90-271; s. 33, ch. 95-401; s. 3, ch. 96-354.

Note.—Created from former s. 744.11.

744.2025 Change of ward's residence.—

(1) **PRIOR COURT APPROVAL REQUIRED.**—A guardian who has power pursuant to this chapter to determine the residence of the ward may not, without court approval, change the residence of the ward from this state to another, or from one county of this state to another county of this state, unless such county is adjacent to the county of the ward's current residence. Any guardian who wishes to remove the ward from the ward's current county of residence to another county which is not adjacent to the ward's current county of residence must obtain court approval prior to removal of the ward. In granting its approval, the court shall, at a minimum, consider the reason for such relocation and the longevity of such relocation.

(2) **IMMEDIATE COURT NOTIFICATION REQUIRED.** Any guardian who wishes to remove the ward from the ward's current county of residence to another county adjacent to the ward's county of residence shall notify the court having jurisdiction of the guardianship within 15 days after relocation of the ward. Such notice shall state the compelling reasons for relocation of the ward and how long the guardian expects the ward to remain in such other county.

History.—s. 16, ch. 89-96; s. 8, ch. 90-271; s. 4, ch. 96-354.

PART IV

GUARDIANS

744.309 Who may be appointed guardian of a resident ward.

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

(1) **RESIDENT.**—

(a) Any resident of this state who is sui juris and is 18 years of age or older is qualified to act as guardian of a ward.

(b) No judge shall act as guardian after this law becomes effective, except when he is related to the ward by blood, marriage, or adoption, or has maintained a close relationship with the ward or the ward's family, and serves without compensation.

(2) **NONRESIDENT.**—A nonresident of the state may serve as guardian of a resident ward if he is:

(a) Related by lineal consanguinity to the ward;

(b) A legally adopted child or adoptive parent of the ward;

(c) A spouse, brother, sister, uncle, aunt, niece, or nephew of the ward, or someone related by lineal consanguinity to any such person; or

(d) The spouse of a person otherwise qualified under this section.

(3) **DISQUALIFIED PERSONS.**—No person who has been convicted of a felony or who, from any incapacity or illness, is incapable of discharging the duties of a guardian, or who is otherwise unsuitable to perform the duties of a guardian, shall be appointed to act as guard-

ian. Further, no person who has been judicially determined to have committed abuse or neglect against a child as defined in s. 39.01(2) and (47), or who has a confirmed report of abuse, neglect, or exploitation which has been uncontested or upheld pursuant to the provisions of ss. 415.104 and 415.1075 shall be appointed to act as a guardian. Except as provided in subsection (5) or subsection (6), a person who provides substantial services to the proposed ward in a professional or business capacity, or a creditor of the proposed ward, may not be appointed guardian and retain that previous professional or business relationship. A person may not be appointed a guardian if he is in the employ of any person, agency, government, or corporation that provides service to the proposed ward in a professional or business capacity, except that a person so employed may be appointed if he is the spouse, adult child, parent, or sibling of the proposed ward or the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the proposed ward's best interest. The court may not appoint a guardian in any other circumstance in which a conflict of interest may occur.

(4) **TRUST COMPANY, STATE BANK OR SAVINGS ASSOCIATION, OR NATIONAL BANK OR FEDERAL SAVINGS AND LOAN ASSOCIATION.**—A trust company incorporated under the laws of this state, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state may act as guardian of the property of the ward.

(5) **NONPROFIT CORPORATE GUARDIAN.**—A nonprofit corporation organized for religious or charitable purposes and existing under the laws of this state may be appointed guardian for a ward. If the nonprofit corporate guardian charges fees against the assets or property of the ward for its services, the corporation must employ at least one professional guardian.

(6) **HEALTH CARE PROVIDER.**—A provider of health care services to the ward, whether direct or indirect, may not be appointed the guardian of the ward, unless the court specifically finds that there is no conflict of interest with the ward's best interests.

History.—s. 1, ch. 74-106; s. 8, ch. 75-222; s. 4, ch. 79-221; s. 7, ch. 81-27; s. 2, ch. 83-139; s. 26, ch. 89-96; s. 14, ch. 90-271; s. 1, ch. 96-184; s. 5, ch. 96-354.

Note.—Created from former s. 744.27.

PART V

ADJUDICATION OF INCAPACITY AND APPOINTMENT OF GUARDIANS

- 744.3215 Rights of persons determined incapacitated.
- 744.331 Procedures to determine incapacity.
- 744.334 Petition for appointment of guardian or professional guardian; contents.
- 744.351 Bond of guardian.

744.3215 Rights of persons determined incapacitated.—

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

- (a) To have an annual review of the guardianship report and plan.
 - (b) To have continuing review of the need for restriction of his rights.
 - (c) To be restored to capacity at the earliest possible time.
 - (d) To be treated humanely, with dignity and respect, and to be protected against abuse, neglect, and exploitation.
 - (e) To have a qualified guardian.
 - (f) To remain as independent as possible, including having his preference as to place and standard of living honored, either as he expressed or demonstrated his preference prior to the determination of his incapacity or as he currently expresses his preference, insofar as such request is reasonable.
 - (g) To be properly educated.
 - (h) To receive prudent financial management for his property and to be informed how his property is being managed, if he has lost the right to manage property.
 - (i) To receive necessary services and rehabilitation.
 - (j) To be free from discrimination because of his incapacity.
 - (k) To have access to the courts.
 - (l) To counsel.
 - (m) To receive visitors and communicate with others.
 - (n) To notice of all proceedings related to determination of capacity and guardianship, unless the court finds the incapacitated person lacks the ability to comprehend the notice.
 - (o) To privacy.
- (2) Rights that may be removed from a person by an order determining incapacity include the right:
- (a) To marry.
 - (b) To vote.
 - (c) To personally apply for government benefits.
 - (d) To have a driver's license.
 - (e) To travel.
 - (f) To seek or retain employment.
- (3) Rights that may be removed from a person by an order determining incapacity and which may be delegated to the guardian include the right:
- (a) To contract.
 - (b) To sue and defend lawsuits.
 - (c) To apply for government benefits.
 - (d) To manage property or to make any gift or disposition of property.
 - (e) To determine his residence.
 - (f) To consent to medical and mental health treatment.
 - (g) To make decisions about his social environment or other social aspects of his life.
- (4) Without first obtaining specific authority from the court, as described in s. 744.3725, a guardian may not:
- (a) Commit the ward to a facility, institution, or licensed service provider without formal placement proceeding, pursuant to chapter 393, chapter 394, or chapter 397.
 - (b) Consent on behalf of the ward to the performance on the ward of any experimental biomedical or behavioral procedure or to the participation by the ward in any biomedical or behavioral experiment. The court may permit such performance or participation only if:

1. It is of direct benefit to, and is intended to preserve the life of or prevent serious impairment to the mental or physical health of the ward; or

2. It is intended to assist the ward to develop or regain his abilities.

(c) Initiate a petition for dissolution of marriage for the ward.

(d) Consent on behalf of the ward to termination of the ward's parental rights.

(e) Consent on behalf of the ward to the performance of a sterilization or abortion procedure on the ward.

History.—s. 34, ch. 89-96; s. 19, ch. 90-271; s. 36, ch. 93-39; s. 13, ch. 94-183; s. 44, ch. 96-169; s. 6, ch. 96-354.

744.331 Procedures to determine incapacity.—

(1) **NOTICE OF PETITION TO DETERMINE INCAPACITY.**—Notice of the filing of a petition to determine incapacity and a petition for the appointment of a guardian if any and copies of the petitions must be served on and read to the alleged incapacitated person. The notice and copies of the petitions must also be given to the attorney for the alleged incapacitated person, and served upon all next of kin identified in the petition. The notice must state the time and place of the hearing to inquire into the capacity of the alleged incapacitated person and that an attorney has been appointed to represent him and that, if he is determined to be incapable of exercising certain rights, a guardian will be appointed to exercise those rights on his behalf.

(2) **ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.**—

(a) The court shall appoint an attorney for each person alleged to be incapacitated in all cases involving a petition for adjudication of incapacity. The alleged incapacitated person may substitute his own attorney for the attorney appointed by the court.

(b) Any attorney representing an alleged incapacitated person may not serve as guardian of the alleged incapacitated person or as counsel for the guardian of the alleged incapacitated person or the petitioner.

(3) **EXAMINING COMMITTEE.**—

(a) Within 5 days after a petition for determination of incapacity has been filed, the court shall appoint an examining committee consisting of three members. One member must be a psychiatrist or other physician. The remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion. One of three members of the committee must have knowledge of the type of incapacity alleged in the petition. Unless good cause is shown, the attending or family physician may not be appointed to the committee. If the attending or family physician is available for consultation, the committee must consult with the physician. Members of the examining committee may not be related to or associated with one another or with the petitioner or the person alleged to be totally or partially incapacitated. A member may not be employed by any

private or governmental agency that has custody of, or furnishes, services or subsidies, directly or indirectly, to the person or the family of the person alleged to be incapacitated or for whom a guardianship is sought. A petitioner may not serve as a member of the examining committee. Members of the examining committee must be able to communicate, either directly or through an interpreter, in the language that the alleged incapacitated person speaks or to communicate in a medium understandable to the alleged incapacitated person if he is able to communicate.

(b) Each member of the examining committee shall examine the person. The examining committee shall determine the alleged incapacitated person's ability to exercise those rights specified in s. 744.3215. In addition to the examination, the examining committee shall have access to, and may consider, previous examinations of the person, including, but not limited to, habilitation plans, school records, and psychological and psychosocial reports voluntarily offered for use by the alleged incapacitated person. The examining committee shall submit a report within 15 days after appointment.

(c) The examination of the alleged incapacitated person must include a comprehensive examination, a report of which shall be filed by the examining committee as part of its written report. The comprehensive examination report should be an essential element, but not necessarily the only element, used in making a capacity and guardianship decision. The comprehensive examination must include, if indicated:

1. A physical examination;
2. A mental health examination; and
3. A functional assessment.

If any of these three aspects of the examination is not indicated or cannot be accomplished for any reason, the written report must explain the reasons for its omission.

(d) The committee's written report must include:

1. To the extent possible, a diagnosis, prognosis, and recommended course of treatment.
2. An evaluation of the alleged incapacitated person's ability to retain his rights, including, without limitation, the rights to marry; vote; contract; manage or dispose of property; have a driver's license; determine his residence; consent to medical treatment; and make decisions affecting his social environment.

3. The results of the comprehensive examination and the committee members' assessment of information provided by the attending or family physician, if any.

4. A description of any matters with respect to which the person lacks the capacity to exercise rights, the extent of that incapacity, and the factual basis for the determination that the person lacks that capacity.

5. The signature of each member of the committee.

(e) A copy of the report must be served on the petitioner and on the attorney for the alleged incapacitated person within 3 days after the report is filed and at least 5 days before the hearing on the petition.

(4) **DISMISSAL OF PETITION.**—If the examining committee concludes that the alleged incapacitated person is not incapacitated in any respect, the court shall dismiss the petition.

(5) ADJUDICATORY HEARING.—

(a) Upon appointment of the examining committee, the court shall set the date upon which the petition will be heard. The date for the adjudicatory hearing must be set no more than 14 days after the filing of the report of the examining committee, unless good cause is shown. The adjudicatory hearing must be conducted at the time and place specified in the notice of hearing and in a manner consistent with due process.

(b) The alleged incapacitated person must be present at the adjudicatory hearing, unless waived by the alleged incapacitated person or his attorney or unless good cause can be shown for his absence. Determination of good cause rests in the sound discretion of the court.

(c) In the adjudicatory hearing on a petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.

(6) ORDER DETERMINING INCAPACITY.—If, after making findings of fact on the basis of clear and convincing evidence, the court finds that a person is incapacitated with respect to the exercise of a particular right, or all rights, the court shall enter a written order determining such incapacity. A person is determined to be incapacitated only with respect to those rights specified in the order.

(a) The court shall make the following findings:

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

2. The exact areas in which the person lacks capacity to make informed decisions about care and treatment services or to meet the essential requirements for his physical or mental health or safety;

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

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

(b) In any order declaring a person incapacitated the court must find that alternatives to guardianship were considered and that no alternative to guardianship will sufficiently address the problems of the ward.

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

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

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

(f) When an order is entered which determines that a person is incapable of exercising delegable rights, a guardian must be appointed to exercise those rights.

(7) FEES.—

(a) The examining committee and any attorney appointed under subsection (2) are entitled to reasonable fees to be determined by the court.

(b) The fees awarded under paragraph (a) shall be paid by the guardian from the property of the ward or, if the ward is indigent, by the county. The county shall have a creditor's claim against the guardianship property for any amounts paid under this section. The county must file its claim within 90 days after the entry of an order awarding attorney ad litem fees. If the county does not file its claim within the 90-day period, the county is thereafter barred from asserting the claim. Upon petition by the county for payment of the claim, the court shall enter an order authorizing immediate payment out of the property of the ward. The board of county commissioners shall keep a record of such payments.

(c) If the petition is dismissed, costs of the proceeding may be assessed against the petitioner if the court finds the petition to have been filed in bad faith.

History.—ss. 9, 26, ch. 75-222; s. 4, ch. 77-328; s. 1, ch. 78-342; s. 6, ch. 79-221; s. 35, ch. 89-96; s. 20, ch. 90-271; s. 4, ch. 91-303; s. 5, ch. 91-306; s. 7, ch. 96-354.

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

(1) Every petition for the appointment of a guardian shall be verified by the petitioner and shall contain statements, to the best of petitioner's knowledge and belief, showing the name, age, residence, and post office address of the alleged incapacitated person or minor; the nature of his incapacity, if any; the extent of guardianship desired, either plenary or limited; the residence and post office address of the petitioner; the names and addresses of the next of kin of the incapacitated person or minor, if known to the petitioner; the name of the proposed guardian; the relationship and previous relationship of the proposed guardian to the ward; the nature and value of property subject to the guardianship; and the reasons why this person should be appointed guardian. If a willing and qualified guardian cannot be located, the petition must so state.

(2) The petition for appointment of a professional guardian must comply with the provisions of subsection (1), and must state that the petitioner is a professional guardian.

History.—ss. 11, 26, ch. 75-222; s. 7, ch. 79-221; s. 36, ch. 89-96; s. 21, ch. 90-271; s. 8, ch. 96-354.

744.351 Bond of guardian.—

(1) Before exercising his authority as guardian, every person appointed a guardian of the property of a ward in this state shall file a bond with surety as prescribed in s. 45.011 to be approved by the clerk. The bond shall be payable to the Governor of the state and his successors in office, conditioned on the faithful performance of all duties by the guardian. In form the bond shall be joint and several. When the petitioner or guardian presents compelling reasons, the court may waive a bond or require the use of a designated financial institution as defined in s. 655.005(1).

(2) When the sureties on a bond are natural persons, the guardian shall be required to file with the annual guardianship report proof satisfactory to the court that the sureties are alive and solvent.

(3) The penal sum of a guardian's bond shall be fixed by the court, and it must be in an amount not less than the full amount of the cash on hand and on deposit belonging to the ward and subject to the control of the

guardian, plus the value of the notes and bonds owned by the ward that are payable to bearer, and plus the value of all other intangible personal property, in whatever form, owned by the ward which has a market value which readily can be fixed and which intangible personal property readily can be traded for cash or its equivalent.

(4) For good cause, the court may require, or increase or reduce the amount of, bond or change or release the surety.

(5) Financial institutions as defined in s. 744.309(4) and public guardians authorized by law to be guardians shall not be required to file bonds.

(6) When it is expedient in the judgment of any court having jurisdiction of any guardianship property, because the size of the bond required of the guardian is burdensome, or for other cause, the court may order, in lieu of a bond or in addition to a lesser bond, that the guardian place all or part of the property of the ward in a designated financial institution under the same conditions and limitations as are contained in s. 69.031. A designated financial institution shall also include a dealer, as defined in s. 517.021(6), if the dealer is a member of the Security Investment Protection Corporation and is doing business in the state.

History.—s. 1, ch. 74-106; ss. 19, 26, ch. 75-222; s. 1, ch. 77-174; s. 2, ch. 78-342; s. 2, ch. 86-120; s. 41, ch. 89-96; s. 26, ch. 90-271; s. 30, ch. 95-401; s. 9, ch. 96-354.

Note.—Created from former s. 744.38.

PART VI

POWERS AND DUTIES

744.367 Duty to file annual guardianship report.

744.3675 Annual guardianship plan.

744.454 Guardian forbidden to borrow or purchase; exceptions.

744.367 Duty to file annual guardianship report.—

(1) Unless the court requires filing on a calendar-year basis, each guardian of the person shall file with the court an annual guardianship plan within 90 days after the last day of the anniversary month the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. If the court requires calendar-year filing, the guardianship plan must be filed within 90 days after the end of the calendar year.

(2) Unless the court requires or authorizes filing on a fiscal-year basis, each guardian of the property shall file with the court an annual accounting on or before April 1 of each year. The annual accounting must cover the preceding calendar year. If the court authorizes or directs filing on a fiscal-year basis, the annual accounting must be filed on or before the first day of the fourth month after the end of the fiscal year.

(3) The annual guardianship report of a guardian of the property must consist of an annual accounting, and the annual report of a guardian of the person of an incapacitated person must consist of an annual guardianship plan. The annual report shall be served on the ward, unless the ward is a minor under the age of 14 years or is totally incapacitated, and on the attorney for the ward, if any. The guardian shall provide a copy to any other person as the court may direct.

(4) Unless the ward is a minor or has been determined to be totally incapacitated, the guardian shall review a copy of the annual report with the ward, to the extent possible. Within 30 days after the annual report has been filed, any interested person, including the ward, may file written objections to any element of the report, specifying the nature of the objection.

(5) If the guardian fails to timely file the annual guardianship report, the judge may impose sanctions which may include contempt, removal of the guardian, or other sanctions provided by law in s. 744.3685.

(6) Notwithstanding any other requirement of this section or unless otherwise directed by the court, the guardian of the property may file the first annual accounting on either a fiscal-year or calendar-year basis. Unless the court directs otherwise, the guardian shall notify the court as to the guardian's filing intention within 30 days from the date the guardian was issued the letter of guardianship. All subsequent annual accountings must be filed on the same accounting period as the first annual accounting unless the court authorizes or directs otherwise. The first accounting period must end within 1 year after the end of the month in which the letters of guardianship were issued to the guardian of the property.

History.—s. 1, ch. 74-106; ss. 6, 26, ch. 75-222; s. 50, ch. 89-96; s. 33, ch. 90-271; s. 25, ch. 92-200; s. 68, ch. 95-211; s. 24, ch. 95-401; s. 10, ch. 96-354.

Note.—Created from former s. 744.452.

744.3675 Annual guardianship plan.—Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how those needs are proposed to be met in the coming year.

(1) Each plan must, if applicable, include:

(a) Information concerning the residence of the ward, including:

1. The ward's address at the time of filing the plan;
2. The name and address of each place where the ward was maintained during the preceding year;
3. The length of stay of the ward at each place;
4. A statement of whether the current residential setting is best suited for the current needs of the ward; and

5. Plans for ensuring during the coming year that the ward is in the best residential setting to meet his needs.

(b) Information concerning the medical condition and needs of the ward, including:

1. A resume of any professional medical treatment given to the ward during the preceding year;
2. The report of a physician who examined the ward no more than 90 days before the end of the report period. Such report must contain an evaluation of the ward's condition and a statement of the current level of capacity of the ward; and
3. The plan for provision of medical, mental health, and rehabilitative services in the coming year.

(c) Information concerning the social condition of the ward, including:

1. The social and personal services currently utilized by the ward;

2. The social skills of the ward, including a statement of how well he maintains interpersonal relationships with others;

3. A description of the ward's activities at communication and visitation; and

4. The social needs of the ward.

(2) Each plan must address the issue of restoration of rights to the ward and include:

(a) A summary of activities during the preceding year which were designed to increase the capacity of the ward;

(b) A statement of whether the ward can have any rights restored; and

(c) A statement of whether restoration of any rights will be sought.

(3) The court, in its discretion, may require reexamination of the ward by a physician at any time.

History.—s. 51, ch. 89-96; s. 34, ch. 90-271; s. 11, ch. 96-354.

744.454 Guardian forbidden to borrow or purchase; exceptions.—A guardian may not purchase property or borrow money from his ward unless:

(1) A court by written order authorizes the sale or loan after a hearing to which interested persons were given notice; or

(2) The property is sold at public sale and the guardian is a spouse, parent, child, brother, or sister of the ward or a cotenant of the ward in the property to be sold.

History.—s. 1, ch. 74-106; ss. 24, 26, ch. 75-222; s. 1, ch. 77-174; s. 78, ch. 89-96; s. 2, ch. 96-184; s. 12, ch. 96-354.

Note.—Created from former s. 745.14.

PART VII

TERMINATION

744.474 Reasons for removal of guardian.

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

(1) Fraud in obtaining his appointment.

(2) Failure to discharge his duties.

(3) Abuse of his powers.

(4) An incapacity or illness, including substance abuse, which renders the guardian incapable of discharging his duties.

(5) Failure to comply with any order of the court.

(6) Failure to return schedules of property sold or accounts of sales of property or to produce and exhibit the ward's assets when so required.

(7) The wasting, embezzlement, or other mismanagement of the ward's property.

(8) Failure to give bond or security for any purpose when required by the court or failure to file with the annual guardianship plan the evidence required by s. 744.351 that the sureties on his bond are alive and solvent.

(9) Conviction of a felony.

(10) Appointment of a receiver, trustee in bankruptcy, or liquidator for any corporate guardian.

(11) Development of a conflict of interest between the ward and the guardian.

(12) A confirmed report pursuant to a protective investigation made by the ¹Department of Health and Rehabilitative Services, which has been uncontested or has been upheld, in accordance with s. 415.1075, that the guardian has abused, neglected, or exploited the ward.

(13) A material failure to comply with the guardianship report by the guardian.

(14) A failure to comply with the rules for timely filing the initial and annual guardianship reports.

(15) A failure to fulfill the guardianship education requirements.

(16) The improper management of the ward's assets.

(17) A material change in the ward's financial circumstances such that the guardian is no longer qualified to manage the finances of the ward, or the previous degree of management is no longer required.

(18) After appointment, the guardian becomes a disqualified person as set forth in s. 744.309(3).

(19) Upon a showing by a person who did not receive notice of the petition for adjudication of incapacity, when such notice is required, and who is related to the ward within the relationships specified for nonresident relatives in ss. 744.309(2) and 744.312(2) and who has not previously been rejected by the court as a guardian that:

(a) The current guardian is not a family member; and

(b) Removal of the current guardian is in the best interest of the ward,

the court may remove the current guardian and appoint the petitioner, or such person as the court deems in the best interest of the ward, either as guardian of the person or of the property, or both.

History.—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222; s. 84, ch. 89-96; s. 138, ch. 95-418; s. 13, ch. 96-354.

Note.—The Department of Health and Rehabilitative Services was redesignated as the Department of Children and Family Services by s. 5, ch. 96-403, and the Department of Health was created by s. 8, ch. 96-403.

Note.—Created from former s. 746.03.

PART IX

PUBLIC GUARDIANSHIP

744.703 Office of public guardian; appointment, notification.

744.704 Powers and duties.

744.708 Reports and standards.

744.703 Office of public guardian; appointment, notification.—

(1) The chief judge of the judicial circuit, after consultation with the circuit judges within the judicial circuit and with appropriate advocacy groups and individuals and organizations who are knowledgeable about the needs of incapacitated persons, may establish, within a county in the judicial circuit or within the judicial circuit, an office of public guardian and create a list of persons best qualified to serve as the public guardian. The public guardian must have knowledge of the legal process and knowledge of social services available to meet the needs of incapacitated persons. A nonprofit corporation under s. 744.309(5) may be appointed public guardian only if:

(a) It has been granted tax-exempt status from the United States Internal Revenue Service; and

(b) It maintains a staff of professionally qualified individuals to carry out the guardianship functions, including a staff attorney who has experience in probate areas and another person who has a master's degree in social work, or a gerontologist, psychologist, registered nurse, or nurse practitioner.

(2) The chief judge shall appoint the public guardian. A public guardian must meet the qualifications for a guardian as prescribed in s. 744.309(1)(a). Upon appointment of the public guardian, the chief judge shall notify the Chief Justice of the Supreme Court of Florida, in writing, of the appointment.

(3) If the needs of the circuit do not require a full-time public guardian, a part-time public guardian may be appointed at reduced compensation.

(4) A public guardian, whether full-time or part-time, may not hold any position that would create a conflict of interest.

(5) The public guardian is to be appointed for a term of 4 years, after which his appointment must be reviewed by the chief judge of the circuit, and may be reappointed. Removal of the public guardian from his office during his term of office must be by the chief judge. This section does not limit the application of ss. 744.474 and 744.477.

History.—s. 1, ch. 86-120; s. 98, ch. 89-96; s. 69, ch. 95-211; s. 27, ch. 95-401; s. 16, ch. 96-354.

744.704 Powers and duties.—

(1) A public guardian may serve as a guardian of a person adjudicated incapacitated under this chapter:

(a) If there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian; and

(b) If the assets of the ward do not exceed the asset level for Medicaid eligibility, exclusive of homestead and exempt property as defined in s. 4, Art. X of the State Constitution, and the ward's income, from all sources, is less than \$4,000 per year. Income from public welfare programs, supplemental security income, optional state supplement, a disability pension, or a social security pension shall be excluded in such computation. However, a ward whose total income, counting excludable income, exceeds \$30,000 a year may not be served.

(2) The public guardian shall be vested with all the powers and duties of a guardian under this chapter, except as otherwise provided by law.

(3) If the public guardian finds that the assets or the income of the ward exceeds the amounts set forth in paragraph (1)(b), the public guardian shall submit a resignation and petition the court for appointment of a successor guardian. The public guardian shall not be dismissed until such time that a private guardian is appointed. If a qualified successor guardian is not available, the public guardian may remain as guardian, provided the guardian makes reasonable efforts to find a successor and reports to the court every 6 months on efforts to obtain a successor.

(4) The public guardian shall be authorized to employ sufficient staff to carry out the duties of his office.

(5) The public guardian may delegate to assistants and other members of his staff the powers and duties

of the office of public guardian, except as otherwise limited by law. The public guardian shall retain ultimate responsibility for the discharge of his duties and responsibilities.

(6) The public guardian, when appointed guardian of an incapacitated person, shall seek a family member or friend, other person, bank, or corporation who is qualified and willing to serve as guardian. Upon determining that there is someone qualified and willing to serve as guardian, either the public guardian or the qualified person shall petition the court for appointment of a successor guardian.

(7) A public guardian shall not commit a ward to a mental health treatment facility, as defined in 's. 394.455(29), without an involuntary placement proceeding as provided by law.

(8) When a person is appointed successor public guardian, he immediately succeeds to all rights, duties, responsibilities, and powers of the preceding public guardian.

(9) When the position of public guardian is vacant, subordinate personnel employed under subsection (4) shall continue to act as if the position of public guardian were filled.

History.—s. 1, ch. 86-120; s. 99, ch. 89-96; s. 45, ch. 96-169.

Note.—Section 394.455(30) defines "treatment facility."

744.708 Reports and standards.—

(1) The public guardian shall keep and maintain proper financial, case control, and statistical records on all matters in which the public guardian serves as guardian.

(2) No report or disclosure of the ward's personal and medical records shall be made, except as authorized by law.

(3) A public guardian shall file an annual report on the operations of the office of public guardian, in writing, by September 1 for the preceding fiscal year with the chief judge of the judicial circuit who shall have responsibility for supervision of the operations of the office of public guardian.

(4) Within 6 months of his appointment as guardian of a ward, the public guardian shall submit to the chief judge of the circuit a report on his efforts to locate a family member or friend, other person, bank, or corporation to act as guardian of the ward and a report on the ward's potential to be restored to capacity.

(5) An independent audit by a qualified certified public accountant shall be performed at least every 2 years. The audit should include an investigation into the practices of the office for managing the person and property of the wards.

(6) The public guardian shall ensure that each ward is seen by a professional staff person at least four times a year.

(7) The ratio for professional staff to wards shall be 1 professional to 40 wards. The chief judge of the circuit upon application of the public guardian, or upon the court's own motion, may enlarge or recede from the ratio for good cause.

(8) The term "professional," for purposes of this part, shall not include the public guardian. The term "professional" shall be limited to those persons who

exercise direct supervision of individual wards under the direction of the public guardian.

History.—s. 1, ch. 86-120; s. 103, ch. 89-96; s. 17, ch. 96-354.

CHAPTER 751

TEMPORARY CUSTODY OF MINOR CHILDREN BY EXTENDED FAMILY

751.011 Definitions.

751.011 Definitions.—As used in ss. 751.01-751.05, the term:

(1) "Extended family" is any family composed of the minor child and a relative of the child who is the child's brother, sister, grandparent, aunt, uncle, or cousin.

(2) "Putative father" is a man who reasonably believes himself to be the biological father of the minor child, but who is unable to prove his paternity due to the absence of the mother of the child.

History.—s. 2, ch. 93-104; s. 4, ch. 96-305.

CHAPTER 753

FAMILY VISITATION NETWORK

753.001 Definitions.

753.002 Florida Family Visitation Network.

753.003 Florida Family Visitation Task Force.

753.004 Supervised visitation projects.

753.001 Definitions.—As used in ss. 753.001-753.004:

(1) A "supervised visitation program" exists where there is contact between a noncustodial parent and one or more children in the presence of a third person responsible for observing and ensuring the safety of those involved. Supervised visitation programs may also include exchange monitoring of children who are participating in court-ordered visitation programs or exchange monitoring where there has been mutual consent between parties for the purposes of facilitating a visitation.

(2) "Exchange monitoring" means supervision of movement of a child from the custodial to the noncustodial parent at the start of the visit and back to the custodial parent at the end of the visit.

This section shall take effect July 1, 1996.

History.—s. 10, ch. 96-402.

753.002 Florida Family Visitation Network.—There is hereby created the Florida Family Visitation Network, which shall have the following responsibilities subject to the availability of resources:

(1) To serve as a clearinghouse on resources and research of supervised visitation programs.

(2) To provide technical assistance and other support services to existing and emerging supervised visitation programs.

(3) To compile a directory of state-supervised visitation programs containing referral information.

(4) To formulate a newsletter for supervised visitation programs.

(5) To organize workshops and conferences which address issues and concerns of supervised visitation programs.

(6) To have the authority to apply for grants and accept private contributions.

(7) To compile data on the use of supervised visitation programs.

This section shall take effect July 1, 1996.

History.—s. 11, ch. 96-402.

753.003 Florida Family Visitation Task Force.—

(1) There is hereby created the Florida Family Visitation Task Force. The task force shall act as the governing body of the Florida Family Visitation Network for 1 year. In doing so, it shall have the duty of carrying out the responsibilities listed in s. 753.002. It shall also:

(a) Develop the network of supervised visitation programs created in s. 753.002 and encourage the membership of persons and entities interested in the establishment and operation of these programs.

(b) Create bylaws which shall include, but not be limited to, establishing membership criteria and dues, and a permanent governing board for the Florida Family Visitation Network.

(c) Serve as an advisory board for the visitation projects of the Institute of Food and Agricultural Sciences of the University of Florida, established in s. 753.004.

(d) Develop an evaluation instrument that may be used by supervised visitation programs and should be used for the Institute of Food and Agricultural Sciences' visitation projects. This evaluation must include, but is not limited to, the following components:

1. The duration that each family used the supervised visitation program.

2. Whether child support payments were being made by the noncustodial parent before, during, and after the time of service.

3. The impact the supervised visitation programs had on families, such as reunification, termination of parental rights, and continued visitation.

4. The cost per family served by the supervised visitation programs.

(e) Prepare a report with recommendations concerning the development of a continuing and expanding network of supervised visitation programs and recommendations concerning the visitation projects of the Institute of Food and Agricultural Sciences to the Speaker of the House of Representatives, the President of the Senate, the Minority Leaders of both houses, the Chief Justice of the Supreme Court, and the Governor, no later than February 1, 1997.

(2) Membership on the Florida Family Visitation Task Force is voluntary. Membership shall be offered to each of the following:

(a) One representative from each established state-supervised visitation program as of the effective date of this act, appointed by the executive director or chief administrator of each program.

(b) One representative from the 'Department of Health and Rehabilitative Services, appointed by the Secretary of 'Health and Rehabilitative Services.