

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 1349 Guardianship Data Transparency

SPONSOR(S): Health & Human Services Committee, Appropriations Committee, Children, Families & Seniors Subcommittee, Chaney and others

TIED BILLS: CS/HB 1351 **IDEN./SIM. BILLS:** CS/SB 1710

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|------------------|----------|---------------------------------------|
| 1) Children, Families & Seniors Subcommittee | 15 Y, 0 N, As CS | Morris | Brazzell |
| 2) Civil Justice & Property Rights Subcommittee | 17 Y, 0 N | Brascomb | Jones |
| 3) Appropriations Committee | 25 Y, 0 N, As CS | Nobles | Pridgeon |
| 4) Health & Human Services Committee | 17 Y, 0 N, As CS | Morris | Calamas |

SUMMARY ANALYSIS

When an individual is unable to make legal decisions regarding his or her person or property, a court may appoint a guardian to act on his or her behalf. A person served by a guardian is a ward, and a guardian may oversee a ward's person or property or both. When a person becomes a ward, that person loses those civil and legal rights transferred to the guardian. When a guardian is given full (plenary) guardianship, the guardian has authority to make all decisions for a ward, such as deciding where the ward lives and whether to sell the ward's property.

Florida's guardianship system, governed by ch. 744, F.S., involves a variety of parties, including alleged incompetent persons and wards; guardians; circuit judges who appoint guardians and oversee their service to individual wards; the clerks of court, who receive filings by guardians and audit them; attorneys, who represent guardians and alleged incompetent persons; family members of wards; and the Department of Elder Affairs (DOEA), which regulates professional guardians.

Various task forces, and situations where guardians have made unethical decisions concerning wards, have highlighted the lack of data within Florida's guardianship system. A recently-formed task force found that basic information about guardianships, such as the number of wards in the state, is unavailable.

The bill requires the Florida of Clerks of Court Operations Corporation (CCOC) and the Clerks of Court to establish a database of guardian and guardianship information which may only be accessed by judges, judicial staff, and the clerks of court. The database must include a publicly accessible search component for current data on the number of wards under the care of a guardian in each county and the type of each guardianship, however this data must not contain the ward's personal identifying information. The bill also requires the CCOC to generate quarterly reports using this data containing aggregated and deidentified data for publication on DOEA's website. Additionally, the bill requires the Office of Program Policy Analysis and Governmental Accountability to use the data to evaluate trends in guardianships in this state and conduct a comparative analysis of guardianship laws in other states.

The bill requires DOEA to publish professional guardian registration profiles on its website, which must be searchable by the public.

The bill provides an appropriation of \$2,400,000 from the General Revenue Fund to the Justice Administrative Commission for distribution to the Florida Clerks of Court Operations Corporation and \$340,000 from the General Revenue Fund to the DOEA for the purpose of implementing the provisions of the act.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Guardianship

When an individual is unable to make legal decisions regarding his or her person or property, a court may appoint a guardian to act on his or her behalf.¹ Adjudicating a person totally incapacitated and in need of a guardian deprives a person of his or her civil and legal rights;² accordingly, the Legislature has recognized that the least restrictive form of guardianship should be used to ensure the most appropriate level of care and the protection of such person's rights.³

The process to determine an individual's incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person (AIP) is incapable of exercising.⁴ Once a person has been adjudicated incapacitated, such a person becomes a "ward," the court appoints a guardian, and letters of guardianship are issued.⁵ The order appointing a guardian must be consistent with the ward's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.⁶

Relationship Between Guardian and Ward

The relationship between a guardian and his or her ward is a fiduciary relationship,⁷ meaning that the guardian is under a duty to act for or to give advice for the benefit of the ward upon matters within the scope of the relationship.⁸ The guardian, as fiduciary, must:⁹

- Act within the scope of the authority granted by the court and as provided by law;
- Act in good faith;
- Not act in a manner contrary to the ward's best interests under the circumstances; and
- Use any special skills or expertise the guardian possesses when acting on behalf of the ward.

Additionally, s. 744.446, F.S., states that the fiduciary relationship between the guardian and the ward may not be used for the private gain of the guardian (other than the remuneration for fees and expenses provided by law). As such, the guardian must act in the best interest of the ward and carry out his or her responsibilities in an informed and considered manner. If a guardian breaches his or her fiduciary duty to the ward, a court may intervene.¹⁰

A guardian can either be "limited" or "plenary."¹¹ A limited guardian is appointed by the court to exercise the legal rights and powers specifically designated by the court 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 or her person or property, or after the person has voluntarily petitioned for appointment of a limited guardian.¹² A plenary

¹ S. 744.102(9), F.S.

² S. 744.101(1), F.S.

³ S. 744.101(2), F.S.

⁴ S. 744.3201, F.S.

⁵ Ss. 744.3371-744.345, F.S.

⁶ S. 744.2005, F.S.

⁷ *Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990); s. 744.361(1), F.S.

⁸ *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

⁹ S. 744.361(1), F.S.

¹⁰ S. 744.446(4), F.S.

¹¹ S. 744.102(9), F.S.

¹² *Id.*

guardian is 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 or her person or property.¹³

Powers and Duties of the Guardian

The guardian of an incapacitated person may exercise only those rights removed from the ward and delegated to the guardian.¹⁴ The guardian has a great deal of power when it comes to managing the ward's estate. Some of these powers require court approval before they may be exercised.

| Examples of Powers That May Be Exercised By a Guardian | |
|--|--|
| With Court Approval ¹⁵ | Without Court Approval ¹⁶ |
| <ul style="list-style-type: none"> • Enter into contracts that are appropriate for, and in the best interest of, the ward. • Perform, compromise, or refuse performance of a ward's existing contracts. • Alter the ward's property ownership interests, including selling, mortgaging, or leasing any real property (including the homestead), personal property, or any interest therein. • Borrow money to be repaid from the property of the ward or the ward's estate. • Renegotiate, extend, renew, or modify the terms of any obligation owing to the ward. • Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate. • Exercise an option contained in an insurance policy payable to the ward. • Make gifts of the ward's property to members of the ward's family in estate and income tax planning. • Pay reasonable funeral, interment, and grave marker expenses for the ward. | <ul style="list-style-type: none"> • Retain assets owned by the ward. • Receive assets from fiduciaries or other sources. • Insure the assets of the estate against damage, loss, and liability. • Pay taxes and assessments on the ward's property. • Pay reasonable living expenses for the ward, taking into consideration the ward's current finances. • Pay incidental expenses in the administration of the estate. • Prudently invest liquid assets belonging to the ward. • Sell or exercise stock subscription or conversion rights. • Consent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise of the ward. • Employ, pay, or reimburse persons, including attorneys, auditors, investment advisers, care managers, or agents, even if they are associated with the guardian, to advise or assist the guardian in the performance of his or her duties. |

Florida law also imposes a number of duties on a guardian after the appointment to a ward in order to provide appropriate services to that ward. The guardian must:¹⁷

- File an initial report within 60 days after the letters of guardianship are signed;¹⁸
- File an annual report with the court consisting of an annual accounting and/or an annual guardianship plan;
- Implement the guardianship plan;
- Consult with other guardians appointed, if any;
- Protect and preserve the property of the ward; invest it prudently, apply income first to the ward before the ward's dependents, and account for it faithfully;
- Observe the standards in dealing with the guardianship property that would be observed by a prudent person dealing with the property of another; and
- If authorized by the court, take possession of all of the ward's property and of the rents, income, issues, and profits from it, whether accruing before or after the guardian's appointment, and of the proceeds arising from the sale, lease, or mortgage of the property or of any part thereof.

Guardian Compensation

¹³ Id.

¹⁴ S. 744.361(1), F.S.

¹⁵ S. 744.441, F.S.

¹⁶ Id.

¹⁷ S. 344.361, F.S.

¹⁸ S. 744.362(1), F.S.

The guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf,¹⁹ is entitled to a reasonable fee for services rendered and reimbursement for costs incurred on behalf of the assets of the guardianship estate unless the court finds the requested compensation to be substantially unreasonable.²⁰ Before the fees may be paid, a petition for fees or expenses must be filed with the court and accompanied by an itemized description of the services performed for the fees and expenses sought to be recovered.²¹

Appointment of a Guardian

In Florida, the circuit court appoints a guardian to a ward. The following may be appointed guardian of a ward:²²

- Any resident of Florida who is 18 years of age or older and has full legal rights and capacity;
- A nonresident, if he or she is related to the ward by blood, marriage, or adoption;
- A trust company, 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 Florida;
- A nonprofit corporation organized for religious or charitable purposes and existing under the laws of Florida;
- A judge who is related to the ward by blood, marriage, or adoption, or has a close relationship with the ward or the ward's family, and serves without compensation;
- A provider of health care services to the ward, whether direct or indirect, when the court specifically finds that there is no conflict of interest with the ward's best interests; or
- A for-profit corporation that meets certain qualifications, including being wholly owned by the person who is the circuit's public guardian in the circuit where the corporate guardian is appointed.

Appointment of a Professional Guardian

A professional guardian is a guardian who has, at any time, rendered services to three or more wards as their guardian; however, a person serving as a guardian for two or more relatives is not considered a professional guardian. A public guardian is considered a professional guardian for purposes of regulation, education, and registration.²³

In each case when a court appoints a professional guardian and does not use a rotation system for such appointment, the court must make specific findings of fact stating why the person was selected as guardian in the particular matter involved.²⁴ The court must consider, and the findings must reference, the following factors:²⁵

- Whether the guardian is related by blood or marriage to the ward;
- Whether the guardian has educational, professional, or business experience relevant to the nature of the services sought to be provided;
- Whether the guardian has the capacity to manage the financial resources involved;
- Whether the guardian has the ability to meet the requirements of the law and the unique needs of the individual case;
- The wishes expressed by an incapacitated person as to who shall be appointed guardian;
- The preference of a minor who is age 14 or over as to who should be appointed guardian;
- Any person designated as guardian in any will in which the ward is a beneficiary; and

¹⁹ 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. S. 744.108(4), F.S.

²⁰ S. 744.108(1), (8), F.S.

²¹ S. 744.108(5), (7), F.S.

²² S. 744.309, F.S.

²³ S. 744.102(17), F.S.

²⁴ S. 744.312(4)(a), F.S.

²⁵ S. 744.312(2)-(3), F.S.

- The wishes of the ward's next of kin, when the ward cannot express a preference.

Additionally, current law prohibits the court from giving preference to the appointment of a person based solely on the fact that such person was appointed by the court to serve as an emergency temporary guardian.²⁶ When a professional guardian is appointed as an emergency temporary guardian, that professional guardian may not be appointed as the permanent guardian of a ward unless one of the next of kin of the alleged incapacitated person or the ward requests that the professional guardian be appointed as permanent guardian.²⁷ However, the court may waive this limitation if the special requirements of the guardianship demand that the court appoint a guardian because he or she has special talent or specific prior experience.²⁸

The court may not appoint a professional guardian who is not registered by the Office of Public and Professional Guardians.²⁹ The following are disqualified from being appointed as a guardian:³⁰

- A person convicted of a felony;
- A person who is incapable of discharging the duties of a guardian due to incapacity or illness, or who is otherwise unsuitable to perform the duties of a guardian;
- A person who has been judicially determined to have committed abuse, abandonment, or neglect against a child;
- A person who has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.04, F.S.;
- A person who provides substantial services to the proposed ward in a professional or business capacity, or a creditor of the proposed ward, if such guardian retains that previous professional or business relationship (with exceptions); or
- A person who is in the employ of any person, agency, government, or corporation that provides service to the proposed ward in a professional or business capacity, unless that person 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.

A court may not appoint a guardian in any other circumstance in which a conflict of interest may occur.³¹

Office of Public and Professional Guardians

While the court appoints guardians to wards, the Department of Elder Affairs (DOEA) regulates professional guardians to ensure that they receive required training and comply with standards of practice.

In 1999, the Legislature created the "Public Guardianship Act" and established the Statewide Public Guardianship Office (SPGO) within DOEA.³² In 2016, the Legislature renamed the Statewide Public Guardianship Office within the DOEA as the Office of Public and Professional Guardians (OPPG) and required OPPG to regulate professional guardians. The OPPG appoints local public guardian offices to provide guardianship services to people who have neither adequate income nor assets to afford a private guardian, nor any willing family or friend to serve as such.

There are 17 public guardian offices that serve all 67 Florida counties.³³ In Fiscal Year 2018-2019, the public guardian offices served 3,816 wards.³⁴ Currently, there are more than 550 professional

²⁶ S. 744.312(5), F.S.

²⁷ S. 744.312(4)(b), F.S.

²⁸ Id.

²⁹ S. 744.2003(9), F.S.

³⁰ S. 744.309(3), F.S.

³¹ Id.

³² S. 744.701, F.S. (1999).

³³ Florida Department of Elder Affairs, 2020 Summary of Programs and Services, https://elderaffairs.org/wp-content/uploads/2020_SOPS_C.pdf (last visited Jan. 21, 2022).

³⁴ Id.

guardians registered with the Office of Public and Professional Guardians within the Department of Elder Affairs.³⁵

The executive director of the OPPG is responsible for the oversight of all public and professional guardians. In addition to other oversight responsibilities for professional guardians, the executive director must review and approve professional guardian annual registration, which must include:³⁶

- Sufficient information to identify the professional guardian which includes:
 - For a professional guardian who is a natural person: the name, address, date of birth, and employer identification or social security number³⁷ of the person; and
 - For a professional guardian which is a partnership or association: the name, address, and employer identification number of the entity.
- Documentation proving bonding and education requirements have been met; and
- Information distinguishing the type of guardianship services provided (public guardian, individually, through partnership, corporation, or other business entity).

Similarly, the executive director of the OPPG is required to oversee the functions of public guardians.³⁸

OPPG currently publishes a list of registered professional guardians on its website, which includes the guardian's name, counties of practice, bond information, corporation name, and registration expiration date.³⁹ However, this does not include disciplinary information, the number of wards overseen by a guardian, or information regarding compliance with statutory reporting requirements and professional qualifications.

Guardian Investigations

In July 2019, Steven Stryker, a ward appointed to professional guardian Rebecca Fierle,⁴⁰ died in a Tampa hospital after choking on food.⁴¹ Hospital staff could not perform lifesaving procedures on him due to a Do Not Resuscitate Order (DNRO) executed by Fierle.⁴²

It was also reported that Fierle had billed AdventHealth, an Orlando area hospital, approximately \$4 million for services rendered to wards⁴³ and developed conflicts of interest with members of appointed examining committees used to determine incapacity of a person.⁴⁴

The Clerk of the Circuit Court and Comptroller of Okaloosa County (Clerk)⁴⁵ investigated complaints filed against Fierle with the OPPG. The Clerk found Fierle had executed a DNRO against Stryker's wishes, violating the standards of practice established by the OPPG.⁴⁶ The Clerk reported that Fierle kept a DNRO in place after a psychiatrist examined Stryker while he was admitted to St. Joseph's

³⁵ Office of Public and Professional Guardians, Department of Elder Affairs, <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited Jan. 28, 2022).

³⁶ S. 744.2002(3), F.S.

³⁷ Social Security numbers are confidential and exempt under s. 119.07, F.S.

³⁸ S. 744.2001(4), F.S.

³⁹ Office of Public and Professional Guardians, *Registered Professional Guardians*, <https://fmw.state.fl.us:8890/apps/doesaapex?app=2115:1:0:::> (last visited Feb. 24, 2022).

⁴⁰ The Orlando Sentinel, *Florida's Troubled Guardian Program*, <https://www.orlandosentinel.com/news/florida/guardians/> (last visited Jan. 28, 2022).

⁴¹ Adrianna Iwasinski, *Orange commissioners approve new position to help monitor guardianship cases*, Click Orlando (Oct. 22, 2019), <https://www.clickorlando.com/news/2019/10/23/orange-commissioners-approve-new-position-to-help-monitor-guardianship-cases/> (last visited Jan. 28, 2022).

⁴² *Id.*

⁴³ *New audit shows AdventHealth paid embattled guardian Rebecca Fierle nearly \$4 million*, ABC Action News WFTS, <https://www.abcactionnews.com/news/local-news/i-team-investigates/new-audit-shows-adventhealth-paid-embattled-guardian-rebecca-fierle-nearly-4-million> (last visited Jan. 28, 2022).

⁴⁴ Monivette Cordeiro, *Florida's troubled guardianship system riddled with conflicts of interest, critics claim | Special Report*, Orlando Sentinel (Aug. 14, 2019), <https://www.orlandosentinel.com/news/florida/guardians/os-ne-guardianship-examining-committee-conflicts-20190814-osbepwlnfezneolyxtvzmryh-story.html> (last visited Jan. 28, 2022).

⁴⁵ J.D. Peacock II, Clerk of the Circuit Court and Comptroller Okaloosa County, Florida, *OPPG Investigation Case Number 19-064* (July 9, 2019).

⁴⁶ *Id.*

Hospital and determined Stryker had the ability to decide that he wanted to live and stated that Stryker wanted to be resuscitated.

The Orange County Comptroller also investigated Fierle's guardianships.⁴⁷ The Comptroller found Fierle had submitted over 6,000 invoices and charges of at least \$3.9M to AdventHealth for payments between January 2009 and June 2019.⁴⁸ The payments were made on behalf of 682 patients. The Comptroller also found that in some cases Fierle had billed both AdventHealth and the wards for identical fees and services. Additionally, the Comptroller identified conflicts of interest, including several situations in which Fierle had previous relationships with wards to whom she was appointed guardian and did not disclose these relationships in the petitions for appointment of a guardian.

An Orange County judge removed Fierle from nearly 100 cases to which she had been appointed. In a letter to the OPPG, Fierle resigned from all appointed guardianship cases (approximately 450 in 13 counties) in July, 2019.⁴⁹ A judge was reported, during a hearing on Fierle, to have stated that she had been unaware of the total number of wards being served by Fierle.⁵⁰

OPPG Investigations

OPPG receives and investigates complaints against professional guardians.⁵¹ Since 2016, OPPG has contracted with the Florida Court Clerks and Comptrollers Statewide Investigation Alliance for investigations of legally sufficient⁵² complaints about professional guardian conduct.⁵³ Investigations which find substantiated allegations of violations by professional guardians may be referred to law enforcement, the Office of the Attorney General, the Office of the State Attorney, or the Florida Bar, as appropriate.⁵⁴ When investigating complaints, OPPG must:⁵⁵

- Initiate an investigation no later than 10 business days after OPPG receives a complaint;
- Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and person filing the complaint within 60 days;
- Obtain supporting information, including interviewing the ward, family member, or interested party, or documentation to determine the legal sufficiency⁵⁶ of a complaint;
- Dismiss any complaint that is not legally sufficient; and
- Coordinate with the clerks of the court to avoid duplication of duties.

OPPG Disciplinary Action

Disciplinary action may be taken against a professional guardian for:⁵⁷

- Making a misleading, deceptive, or fraudulent representation in or related to the practice of guardianship;
- Violating any rule governing guardians or guardianship adopted by OPPG;

⁴⁷ Orange County Comptroller, *Report No. 479 – Investigation of Payments Made to Professional Guardian – Rebecca Fierle by AdventHealth*.

⁴⁸ *Id.*

⁴⁹ Greg Angel, *Embattled Guardian Resigns From Cases Statewide; Criminal Investigation Continues*, Spectrum News 13 (July 29, 2019), <https://www.mynews13.com/fl/orlando/crime/2019/07/29/embattled-guardian-resigns-from-cases-statewide> (last visited Jan. 28, 2022).

⁵⁰ Greg Angel, *Watchdog: Judge Dismisses Embattled Guardian's Appeal to Reverse Court Order*, Spectrum News 13 (Nov. 19, 2019) <https://www.mynews13.com/fl/orlando/news/2019/11/19/watchdog-fierle-appeal-to-reverse-court-order-dismissed> (last visited Jan. 28, 2022).

⁵¹ S. 744.2004, F.S.

⁵² A complaint is legally sufficient if it contains ultimate facts that show a violation of a standard of practice by a professional guardian has occurred.

⁵³ Florida Clerks and Comptrollers Statewide Investigation Alliance, *About Florida's Guardianship Partnership*, <https://flclerkia.com/> (last visited Feb. 25, 2022).

⁵⁴ *Id.*

⁵⁵ *Supra*, note 51.

⁵⁶ A complaint is legally sufficient if it contains ultimate facts that show a violation of a standard of practice by a professional guardian has occurred.

⁵⁷ S. 744.20041, F.S.

- Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to a crime which relates to the practice of, or ability to practice as, a professional guardian;
- Failing to comply with the educational course requirements for professional guardians;
- Having a registration, license, or authority to practice a regulated profession revoked;
- Knowingly filing a false report or complaint with OPPG against another guardian;
- Attempting to obtain, obtaining, or renewing a registration or license to practice a profession by bribery, fraud, or a known error;
- Failing to report a violation of ch. 744, F.S. or the rules of OPPG to OPPG;
- Failing to perform a legal or statutory obligation;
- Making or filing a false report that is signed in the person's capacity as professional guardian;
- Using the position of guardian for financial gain;
- Violating or failing to comply with an order from OPPG;
- Improperly interfering with an investigation;
- Using the guardianship relationship to engage or attempt to engage in sexual activity;
- Failing to report to OPPG within 30 days being convicted or found guilty of, or enter a plea of guilty or nolo contendere to a crime;
- Being unable to perform the functions of guardian;
- Failing to post and maintain a blanket fiduciary bond;
- Failing to maintain all records relating to a guardianship for specified time; or
- Violating any provision of ch. 744, F.S., or any rules adopted thereunder.

When OPPG finds that a professional guardian is guilty of any of the grounds for discipline, it may take action against that guardian by entering an order imposing one or more penalties on the professional guardian. When determining what action is appropriate against a professional guardian, prior to consideration of any mitigation or rehabilitation for the professional guardian, OPPG must first consider what sanctions are necessary to safeguard the wards and protect the public. The disciplinary guidelines should specify a meaningful range of penalties based on the severity and repetition of offenses and that minor violations should be treated differently than those which endanger the ward or the public. OPPG may impose any combination of the following sanctions:⁵⁸

- Refuse to register an applicant as a professional guardian;
- Suspend or revoke of a professional guardian's registration;
- Issue of a reprimand;
- Require treatment, completion of continuing education courses, or reexamination;
- Require restitution; or
- Require remedial education.

If the final determination from a disciplinary proceeding is to suspend or revoke the guardian's registration, the determination must be provided to any court that oversees any guardianship to which the professional guardian is appointed.⁵⁹

OPPG is required to report any suspected abuse, neglect or exploitation of a vulnerable adult as a result of a complaint, or investigation of a complaint, to the Department of Children and Families' central abuse hotline.⁶⁰

Guardianship Data in Florida

Several task forces have highlighted the challenge of serving wards without available data, regionally and statewide.

For instance, the 2014 Restoration of Capacity Study and Work Group Report stated:⁶¹

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ S. 744.2004(5), F.S.

⁶¹ Florida Developmental Disabilities Council, *Restoration of Capacity Study and Work Group Report*, Feb. 28, 2014, <https://www.flcourts.org/content/download/404570/file/Restoration-of-Capacity-Study-and-Work-Group-Report-2014.pdf>.

“There is little uniform data collected on guardianships in Florida. The Office of the State Courts Administrator reports at the state level only the number of guardianships filed in a given year and the dispositions of those cases. The state does not keep a record of the total number of persons under guardianship, whether the guardianship is plenary or partial, the nature of the disability of the person under guardianship, or a host of other data crucial to making informed decisions about systems change. Additionally, there is neither central reporting of the number of Suggestions of Capacity filed nor restoration outcomes in general.”

A 2022 report by a task force convened by the Florida Court Clerks and Comptrollers Association including stakeholders representing a variety of perspectives, including wards, guardians, attorneys, legislators, courts, and clerks of courts, recommended the creation of a statewide data collection system for all guardianship cases. The task force found that Florida has little state-wide formalized guardianship case data collection or sharing processes in place, and that much of the needed information exists in the 67 separate Florida county clerks of courts’ case maintenance systems.⁶²

According to the task force report, the purpose for creating a statewide data collection system for all guardianship cases would be to provide meaningful and objective data for improvements to the guardianship system, while increasing the public trust with the transparency of non-confidential information. The task force report also recommended that judicial circuits collect and report a variety of data, such as the existence of advance directives, powers of attorney, health care surrogate designations, and other similar legal documents; and guardianship case information and changes.⁶³

Current law does not authorize or require a statewide database containing information relating to guardianships.

⁶² Florida Clerks of Court and Comptrollers, *Guardianship Improvement Task Force Final Report*, Jan. 2022 <https://guardianshiptf.wpengine.com/wp-content/uploads/2022/01/GITFReport-Jan2022.pdf>.

⁶³ *Id.*

Office of the State Courts Administrator

The Office of the State Courts Administrator (OSCA) is the administrative arm of the Florida Supreme Court.⁶⁴ OSCA serves the supreme court and the chief justice in carrying out responsibilities as the chief administrative officer of the judicial branch. OSCA's functions include budgetary, intergovernmental, fiscal, statistical, technological, educational, and legal responsibilities relating to the operations of state courts.⁶⁵

Technical Advisory Committee

A technical advisory committee is an advisory body created without specific statutory enactment for a time not to exceed one year, or created by specific statutory enactment for a time not to exceed three years, and appointed to study a specific problem and recommend a solution or policy alternative related to that problem. The existence of such a committee terminates upon the completion of its assignment.⁶⁶

Florida Clerks of Courts Corporation

In 2003, the Legislature created the Florida Clerks of Court Operations Corporation (CCOC).⁶⁷ All clerks of the circuit court are members of the CCOC, and the CCOC's duties are performed by an executive council composed of eight clerks and three ex officio members designated by the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.⁶⁸ The CCOC's tasks include:⁶⁹

- Recommending changes in the amounts of various court-related fines, fees, service charges, and costs established by law to ensure that clerks have reasonable and adequate funding to perform their court-related functions;
- Developing and certifying a uniform system of workload measures and workload standards for court-related functions;
- Contracting with the Department of Financial Services (DFS) for audit of the court-related expenditures of individual clerks; and
- Approving the clerks' proposed budgets.

Current law does not require the CCOC or the Clerks of Court to develop and maintain a guardianship database.

Effect of the Bill

Guardianship Data in Florida

Courts Database

The bill requires the Florida of Clerks of Court Operations Corporation and the Clerks of Court to establish a statewide database of guardian and guardianship information. The database must meet interoperability standards established by the Florida Courts Technology Commission⁷⁰ within the

⁶⁴ Florida Courts – Office of the State Courts Administrator, *Florida Courts*, <https://www.flcourts.org/Florida-Courts> (last visited Feb. 25, 2022).

⁶⁵ Office of the State Courts Administrator, *OSCA Departments*, <https://www.flcourts.org/Administration-Funding/Court-Administration-About-Us/OSCA-Departments> (last visited Feb. 25, 2022).

⁶⁶ Id.

⁶⁷ Ch. 2003-402, Laws of Fla.

⁶⁸ S. 28.35, F.S.

⁶⁹ S. 28.35(2), F.S.

⁷⁰ The Florida Courts Technology Commission (FCTC) was established as a standing Commission by the Supreme Court to oversee, manage, and direct the development and use of technology within the judicial branch under the direction of the Florida Supreme Court. The FCTC provides technical guidance and consultation to the Office of the State Courts Administrator. See Florida Courts Technology Commission, 2021 Yearly Report (April 1, 2021), <https://www.flcourts.org/content/download/735529/file/FCTC-yearly%20report%20April%202021.pdf> (last visited Feb. 25, 2022).

Florida Supreme Court, enabling each circuit court to easily access the data for regular use in guardianship judicial proceedings.

The bill specifies minimum requirements for the database, including:

- Professional guardian registration and disciplinary data provided by OPPG;
- Information on the status of guardian compliance with the statutory qualifications for guardianship;
- The status of statutorily-required reports and submissions; and
- The number of wards served by each guardian.

The database must be accessible only by judges, judicial staff, and the clerks of court and restrict access to information needed to perform individual court personnel duties. Judges and magistrates must have full access to the database. Additionally, the database must be searchable by, at a minimum, the following categories:

- Petitioner;
- Ward;
- Ward demographic information;
- Guardian and guardian office location;
- Counsel;
- Other parties to each case; and
- Judge.

The database must include a publicly accessible search component for current data on the number of wards under the care of a guardian in each county and the type of each guardianship. This publicly accessible data must not contain the ward's personal identifying information.

The CCOC must generate monthly reports of statewide, circuit-level, and county-level statistical data through the database to assist the courts and OPPG as well as provide transparency to the public and policy makers. The reports may only include deidentified, aggregated data and must be published on the Department of Elder Affairs website. The legislature, judiciary, or DOEA may request reports from the CCOC at any time. The bill requires the OPPG to share professional guardian registration and disciplinary data for use in the database.

OPPAGA Study

The bill requires the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to analyze aggregated and deidentified guardianship data provided by the CCOC to evaluate state trends in guardianship. Additionally, OPPAGA must conduct a comparative analysis of guardianship laws in other states. OPPAGA must report its findings and recommendations to the Governor and the Legislature beginning in October, 2024, and annually thereafter through October, 2027.

OPPG Guardian Profiles

The bill requires OPPG to publish professional guardian registration profiles on its website which must be searchable by the public and include, at a minimum:

- Information submitted as part of a professional guardian's annual registration under s. 744.2002, F.S.;
- The number and type of any substantiated complaints against the professional guardian; and
- Any disciplinary actions taken by the department.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

- Section 1:** Creates s. 744.2112, F.S., relating to guardianship information and transparency.
Section 2: Amends s. 744.2001, F.S., relating to Office of Public and Professional Guardians.
Section 3: Provides an appropriation to the Justice Administrative Commission.
Section 4: Provides an appropriation to the Department of Elder Affairs.
Section 5: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill provides an appropriation of \$2,400,000 to the Clerks of Court to establish a new statewide database of guardianship information.

The bill provides an appropriation of \$300,000 in nonrecurring funds and \$40,000 in recurring funds to DOEA for establishing connections with the new database and for technology allowing searches of guardian profiles.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2022, the Children, Families, and Senior Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the underlying bill in various ways, including that it:

- Changed the entity responsible for the guardianship database from the Department of Elder Affairs to the clerks of court and the Florida Association of Court Clerks and Comptrollers.
- Eliminated language amending chapter 744, F.S.

On February 22, 2022, the Appropriations Committee adopted one amendment and reported the bill favorably. The amendment provides:

- The Florida of Clerks of Court Operations Corporation and the Clerks of Court, instead of the Florida Association of Court Clerks and Comptrollers, Inc., shall establish a statewide database of guardianship information.
- An appropriation of \$2,400,000 from the General Revenue Fund to the Justice Administrative Commission for distribution to the Florida Clerks of Court Operations Corporation for the purpose of implementing the provisions of the act, and
- An appropriation of \$340,000 from the General Revenue Fund to the Department of Elder Affairs for the purpose of implementing the provisions of the act.

On February 28, 2022, the Health and Human Services Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Required the Florida Clerks of Court Operations Corporation and the Clerks of Court to establish a statewide database of guardianship information which must meet interoperability standards defined by the Florida Courts Technology Commission and have a public-facing search component.
- Required the Florida Clerk of Courts Operations Corporation to generate monthly reports of aggregated, deidentified guardianship data which must be published on the Department of Elder Affairs website.
- Required the Office of Public and Professional Guardians to publish professional guardian profiles on its website.
- Required OPPAGA to evaluate trends in guardianships in this state and conduct a comparative analysis of guardianship laws in other states.

This analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.