

By Senator Garcia

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1 A bill to be entitled
2 An act relating to guardianship; providing a short
3 title; amending s. 744.102, F.S.; defining the term
4 "family"; amending s. 744.2006, F.S.; requiring that
5 public guardians be appointed on a rotating basis;
6 amending s. 744.3021, F.S.; requiring the court to
7 establish visitation rights of a minor's family;
8 creating a rebuttable presumption; requiring certain
9 evidence for the denial of visitation or other
10 contact; authorizing the court to establish reasonable
11 limitations on such visitation; requiring that any
12 limitations on visitation or other contact be
13 specified in the order of appointment; amending s.
14 744.3203, F.S.; authorizing the suspension of a power
15 of attorney under certain circumstances; requiring a
16 jury to determine if a power of attorney should be
17 suspended; amending s. 744.3215, F.S.; requiring a
18 full reevaluation of the need for guardianship after a
19 certain time; prohibiting certain judges from
20 overseeing the reevaluation proceedings; amending s.
21 744.331, F.S.; requiring the court to impanel a jury
22 for a certain purpose; requiring the court to
23 establish visitation rights of an alleged
24 incapacitated person's family; creating a rebuttable
25 presumption; requiring certain evidence to deny
26 visitation or other contact; authorizing the court to
27 establish reasonable limitations on such visitation;
28 requiring that any limitations on visitation or other
29 contact be specified in the order determining

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30 incapacity; requiring a jury to make certain decisions
31 under certain circumstances; authorizing the court to
32 grant authority to certain persons even if a guardian
33 is appointed; amending s. 744.334, F.S.; revising
34 requirements for a petition for the appointment of a
35 guardian; amending s. 744.361, F.S.; conforming
36 provisions to changes made by the act; amending ss.
37 744.365 and 744.3678, F.S.; requiring that the
38 verified inventory and annual accounting be made
39 available to certain persons; amending s. 744.372,
40 F.S.; conforming provisions to changes made by the
41 act; amending ss. 744.462 and 744.474, F.S.;
42 conforming provisions to changes made by the act;
43 amending ss. 44.407 and 744.2003, F.S.; conforming
44 cross-references; providing an effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. This act may be cited as "Karilyn's Law."

49 Section 2. Present subsections (8) through (22) of section
50 744.102, Florida Statutes, are redesignated as subsections (9)
51 through (23), respectively, and a new subsection (8) is added to
52 that section, to read:

53 744.102 Definitions.—As used in this chapter, the term:
54 (8) "Family" means a parent, sibling, child, spouse, or any
55 other relative by blood, marriage, or adoption of the minor,
56 ward, or alleged incapacitated person.

57 Section 3. Subsection (2) of section 744.2006, Florida
58 Statutes, is amended to read:

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59 744.2006 Office of Public and Professional Guardians;
60 appointment, notification.—

61 (2) The executive director shall appoint or contract with a
62 public guardian from the list of candidates described in
63 subsection (1). A public guardian must meet the qualifications
64 for a guardian as prescribed in s. 744.309(1)(a). Public
65 guardians for alleged incapacitated persons or minors must be
66 appointed on a rotating basis by the executive director. Upon
67 appointment of the public guardian, the executive director shall
68 notify the chief judge of the judicial circuit and the Chief
69 Justice of the Supreme Court of Florida, in writing, of the
70 appointment.

71 Section 4. Subsection (2) of section 744.3021, Florida
72 Statutes, is amended to read:

73 744.3021 Guardians of minors.—

74 (2) A minor is not required to attend the hearing on the
75 petition for appointment of a guardian, unless otherwise
76 directed by the court. During the hearing on the petition for
77 appointment of a guardian, the court shall establish the
78 visitation rights of the minor's family. There is a rebuttable
79 presumption in favor of allowing visitation or other contact
80 with the minor's family. Visitation or other contact may only be
81 denied upon a showing of clear and convincing evidence that
82 visitation or other contact is not in the best interests of the
83 minor. The court may establish reasonable limitations on the
84 visitation rights of the minor's family. The court shall include
85 any such limitations in the order of appointment.

86 Section 5. Subsections (1) and (3) of section 744.3203,
87 Florida Statutes, are amended to read:

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88 744.3203 Suspension of power of attorney before incapacity
89 determination.—

90 (1) At any time during proceedings to determine incapacity
91 but before the entry of an order determining incapacity, the
92 authority granted under an alleged incapacitated person's power
93 of attorney to a parent, spouse, child, or grandchild is
94 suspended only if ~~when~~ the petitioner files a motion stating
95 that a specific power of attorney should be suspended for any of
96 the following grounds:

97 (a) The agent's decisions are not in accord with the
98 alleged incapacitated person's known desires.

99 (b) The power of attorney is invalid.

100 (c) The agent has failed to discharge his or her duties or
101 incapacity or illness renders the agent incapable of discharging
102 duties.

103 (d) The agent has abused powers.

104 (e) There is a danger that the property of the alleged
105 incapacitated person may be wasted, misappropriated, or lost
106 unless the authority under the power of attorney is suspended.

107
108 Grounds for suspending a power of attorney do not include the
109 existence of a dispute between the agent and the petitioner
110 which is more appropriate for resolution in some other forum or
111 a legal proceeding other than a guardianship proceeding.

112 (3) Upon the filing of a response to the motion by the
113 agent under the power of attorney, the court shall impanel a
114 jury to determine whether the petitioner met his or her burden
115 to suspend a power of attorney and shall schedule the motion for
116 an expedited hearing. Unless an emergency arises and the agent's

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117 response sets forth the nature of the emergency, the property or
118 matter involved, and the power to be exercised by the agent,
119 notice must be given to all interested persons, the alleged
120 incapacitated person, and the alleged incapacitated person's
121 attorney. Based on the jury's determination, the court order
122 following the hearing must set forth what powers the agent is
123 permitted to exercise, if any, pending the outcome of the
124 petition to determine incapacity.

125 Section 6. Paragraph (b) of subsection (1) of section
126 744.3215, Florida Statutes, is amended to read:

127 744.3215 Rights of persons determined incapacitated.—

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

130 (b) To have continuing review of the need for restriction
131 of his or her rights and to have a full reevaluation every 3
132 years of the need for guardianship, including an examination by
133 an examining committee and an adjudicatory hearing as required
134 under s. 744.331. The adjudicatory hearing may not be conducted
135 by the same judge who conducted the initial adjudicatory
136 hearing.

137 Section 7. Paragraph (a) of subsection (5) and paragraphs
138 (a) and (f) of subsection (6) of section 744.331, Florida
139 Statutes, are amended, and paragraph (d) is added to subsection
140 (5) of that section, to read:

141 744.331 Procedures to determine incapacity.—

142 (5) ADJUDICATORY HEARING.—

143 (a) Upon appointment of the examining committee, the court
144 shall set the date upon which the petition will be heard and, if
145 necessary, impanel a jury to determine the validity of the

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146 alleged incapacitated person's trust, trust amendment, power of
147 attorney, or will. The adjudicatory hearing must be conducted at
148 least 10 days, which time period may be waived, but no more than
149 30 days, after the filing of the last filed report of the
150 examining committee members, unless good cause is shown. The
151 adjudicatory hearing must be conducted at the time and place
152 specified in the notice of hearing and in a manner consistent
153 with due process.

154 (d) In the adjudicatory hearing on a petition alleging
155 incapacity, the court shall establish the visitation rights of
156 the family of the person alleged to be incapacitated. There is a
157 rebuttable presumption in favor of allowing visitation or other
158 contact with the family of the person alleged to be
159 incapacitated. Visitation or other contact may only be denied
160 upon a showing of clear and convincing evidence that visitation
161 or other contact is not in the best interests of the person
162 alleged to be incapacitated. The court may establish reasonable
163 limitations on the visitation rights of the family of the person
164 alleged to be incapacitated. The court must include any such
165 limitations in the order determining incapacity.

166 (6) ORDER DETERMINING INCAPACITY.—If, after making findings
167 of fact on the basis of clear and convincing evidence, the court
168 finds that a person is incapacitated with respect to the
169 exercise of a particular right, or all rights, the court shall
170 enter a written order determining such incapacity. In
171 determining incapacity, the court shall consider the person's
172 unique needs and abilities and may only remove those rights that
173 the court finds the person does not have the capacity to
174 exercise. A person is determined to be incapacitated only with

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175 respect to those rights specified in the order.

176 (a) The court shall make all of the following findings:

177 1. The exact nature and scope of the person's
178 incapacities.~~†~~

179 2. The exact areas in which the person lacks capacity to
180 make informed decisions about care and treatment services or to
181 meet the essential requirements for her or his physical or
182 mental health or safety.~~†~~

183 3. The specific legal disabilities to which the person is
184 subject.~~†~~ ~~and~~

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

187 5. The limitations on the visitation rights of the person's
188 family, if any.

189 (f) ~~If Upon the filing of a verified statement by an~~
190 ~~interested person~~ files a verified statement stating~~†~~

191 ~~1.~~ that he or she has a good faith belief that the alleged
192 incapacitated person's trust, trust amendment, ~~or~~ durable power
193 of attorney, or will is invalid~~†~~ and provides

194 ~~2.~~ a reasonable factual basis for that belief, the court
195 must impanel a jury to consider the facts provided and determine
196 whether the trust, trust amendment, or durable power of
197 attorney, or will is a reasonable ~~shall not be deemed to be an~~
198 alternative to the appointment of a guardian. However, the
199 appointment of a guardian does not limit the court's power to
200 determine that certain authority granted by a trust, trust
201 amendment, durable power of attorney, or will is to remain
202 exercisable by the agent.

203 Section 8. Subsection (1) of section 744.334, Florida

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204 Statutes, is amended to read:

205 744.334 Petition for appointment of guardian or
206 professional guardian; contents.—

207 (1) Every petition for the appointment of a guardian must
208 ~~shall~~ be verified by the petitioner and ~~shall~~ contain all of the
209 following information statements, to the best of petitioner's
210 knowledge and belief: ~~showing~~

211 (a) The name, age, residence, and post office address of
212 the alleged incapacitated person or minor.†

213 (b) The nature of the her or his incapacity of the alleged
214 incapacitated person, if any.†

215 (c) The extent of guardianship desired, either plenary or
216 limited.†

217 (d) The residence and post office address of the
218 petitioner.†

219 (e) The names and addresses of the next of kin of the
220 alleged incapacitated person or minor, if known to the
221 petitioner.†

222 (f) The name of the proposed guardian and the reasons why
223 she or he should be appointed guardian.†

224 (g) Whether the proposed guardian is a professional
225 guardian.†

226 (h) The relationship and previous relationship of the
227 proposed guardian to the alleged incapacitated person or minor.†

228 (i) Whether the alleged incapacitated person or minor has a
229 valid trust, trust amendment, durable power of attorney, or
230 will.

231 (j) Any other type of guardianship under part III of this
232 chapter or alternatives to guardianship that the alleged

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233 incapacitated person or minor has designated or is in currently
234 or has been in previously.~~†~~

235 (k) The reasons why a guardian advocate under s. 744.3085
236 or other alternatives to guardianship, including a valid will
237 executed as required in s. 732.502, are insufficient to meet the
238 needs of the alleged incapacitated person or minor.~~†~~ ~~and~~

239 (l) The nature and value of property subject to the
240 guardianship. The petition must state whether a willing and
241 qualified guardian cannot be located.

242

243 As used in this subsection, the term "alternatives to
244 guardianship" means an advance directive as defined in s.
245 765.101, a durable power of attorney as provided in chapter 709,
246 a representative payee under 42 U.S.C. s. 1007, or a trust
247 instrument as defined in s. 736.0103.

248 Section 9. Paragraph (b) of subsection (13) and paragraph
249 (d) of subsection (14) of section 744.361, Florida Statutes, are
250 amended to read:

251 744.361 Powers and duties of guardian.—

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

255 (b) Allow the ward to maintain visitation or other contact
256 with his or her family and friends unless a court has:

257 1. Determined that such visitation or other contact is not
258 in the best interests of the ~~guardian believes that such contact~~
259 ~~may cause harm to the ward; or~~

260 2. Placed reasonable limitations on such visitation or
261 other contact in the order determining incapacity or, in the

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262 case of a minor, the order of appointment.

263 (14) A professional guardian must ensure that each of the
264 guardian's wards is personally visited by the guardian or one of
265 the guardian's professional staff at least once each calendar
266 quarter. During the personal visit, the guardian or the
267 guardian's professional staff person shall assess:

268 (d) The nature and extent of visitation or other contact
269 ~~and communication~~ with the ward's family and friends.

270

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

273 Section 10. Subsection (1) of section 744.365, Florida
274 Statutes, is amended to read:

275 744.365 Verified inventory.—

276 (1) FILING.—A guardian of the property shall file a
277 verified inventory of the ward's property. The verified
278 inventory must be made available to the ward's family, the
279 ward's next of kin, and the beneficiaries and heirs of the
280 ward's valid will.

281 Section 11. Subsection (1) of section 744.3678, Florida
282 Statutes, is amended to read:

283 744.3678 Annual accounting.—

284 (1) Each guardian of the property must file an annual
285 accounting with the court. The annual accounting must be made
286 available to the ward's family, ward's next of kin, and the
287 beneficiaries and heirs of the ward's valid will.

288 Section 12. Section 744.372, Florida Statutes, is amended
289 to read:

290 744.372 Judicial review of guardianships.—The court retains

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291 jurisdiction over all guardianships.

292 (1) The court shall review the appropriateness and extent
293 of a guardianship annually and:

294 (a)~~(1)~~ Whether ~~if~~ an objection to the terms of the
295 guardianship report has been filed pursuant to s. 744.367;

296 (b)~~(2)~~ Whether an ~~if~~ interim review has been requested
297 under s. 744.3715;

298 (c)~~(3)~~ Whether ~~if~~ a person, including the ward, has filed a
299 suggestion of increased capacity; or

300 (d)~~(4)~~ Whether ~~if~~ the guardianship report has not been
301 received and the guardian has failed to respond to a show cause
302 order.

303 (2) Every 3 years the court shall conduct a full
304 reevaluation of the need for guardianship, including an
305 examination by an examining committee and an adjudicatory
306 hearing as required under s. 744.331. The adjudicatory hearing
307 required under this subsection may not be conducted by the same
308 judge who conducted the initial adjudicatory hearing.

309 Section 13. Section 744.462, Florida Statutes, is amended
310 to read:

311 744.462 Determination regarding alternatives to
312 guardianship.—Any judicial determination concerning the validity
313 of the ward's durable power of attorney, trust, ~~or~~ trust
314 amendment, or will must shall be promptly reported in the
315 guardianship proceeding by the guardian of the property. If the
316 instrument has been judicially determined to be valid or if,
317 after the appointment of a guardian, a petition is filed
318 alleging that there is an alternative to guardianship which will
319 sufficiently address the problems of the ward, the court must

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320 impanel a jury to ~~shall~~ review the continued need for a guardian
321 and the extent of the need for delegation of the ward's rights.

322 Section 14. Subsection (20) of section 744.474, Florida
323 Statutes, is amended to read:

324 744.474 Reasons for removal of guardian.—A guardian may be
325 removed for any of the following reasons, and the removal shall
326 be in addition to any other penalties prescribed by law:

327 (20) Upon a showing that removal of the current guardian is
328 in the best interests ~~interest~~ of the ward. In determining
329 whether a guardian who is a family member of ~~related by blood or~~
330 ~~marriage to~~ the ward is to be removed, there is ~~shall be~~ a
331 rebuttable presumption that the guardian is acting in the best
332 interests of the ward.

333 Section 15. Paragraph (a) of subsection (5) of section
334 44.407, Florida Statutes, is amended to read:

335 44.407 Elder-focused dispute resolution process.—

336 (5) QUALIFICATIONS FOR ELDERCARING COORDINATORS.—

337 (a) The court shall appoint qualified eldercaring
338 coordinators who:

339 1. Meet one of the following professional requirements:

340 a. Are licensed as a mental health professional under
341 chapter 491 and hold at least a master's degree in the
342 professional field of practice;

343 b. Are licensed as a psychologist under chapter 490;

344 c. Are licensed as a physician under chapter 458 or chapter
345 459;

346 d. Are licensed as a nurse under chapter 464 and hold at
347 least a master's degree;

348 e. Are certified by the Florida Supreme Court as a family

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349 mediator and hold at least a master's degree;

350 f. Are a member in good standing of The Florida Bar; or

351 g. Are a professional guardian as defined in s. 744.102 ~~s.~~

352 ~~744.102(17)~~ and hold at least a master's degree.

353 2. Have completed all of the following:

354 a. Three years of postlicensure or postcertification

355 practice.~~†~~

356 b. A family mediation training program certified by the

357 Florida Supreme Court.~~†~~ ~~and~~

358 c. An eldercaring coordinator training program certified by

359 the Florida Supreme Court. The training must total at least 44

360 hours and must include advanced tactics for dispute resolution

361 of issues related to aging, illness, incapacity, or other

362 vulnerabilities associated with elders, as well as elder,

363 guardianship, and incapacity law and procedures and less

364 restrictive alternatives to guardianship; phases of eldercaring

365 coordination and the role and functions of an eldercaring

366 coordinator; the elder's role within eldercaring coordination;

367 family dynamics related to eldercaring coordination; eldercaring

368 coordination skills and techniques; multicultural competence and

369 its use in eldercaring coordination; at least 6 hours of the

370 implications of elder abuse, neglect, and exploitation and other

371 safety issues pertinent to the training; at least 4 hours of

372 ethical considerations pertaining to the training; use of

373 technology within eldercaring coordination; and court-specific

374 eldercaring coordination procedures. Pending certification of a

375 training program by the Florida Supreme Court, the eldercaring

376 coordinator must document completion of training that satisfies

377 the hours and the elements prescribed in this sub-subparagraph.

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378 3. Have successfully passed a Level 2 background screening
379 as provided in s. 435.04(2) and (3) or are exempt from
380 disqualification under s. 435.07. The prospective eldercaring
381 coordinator must submit a full set of fingerprints to the court
382 or to a vendor, entity, or agency authorized by s. 943.053(13).
383 The court, vendor, entity, or agency shall forward the
384 fingerprints to the Department of Law Enforcement for state
385 processing, and the Department of Law Enforcement shall forward
386 the fingerprints to the Federal Bureau of Investigation for
387 national processing. The prospective eldercaring coordinator
388 shall pay the fees for state and federal fingerprint processing.
389 The state cost for fingerprint processing shall be as provided
390 in s. 943.053(3)(e) for records provided to persons or entities
391 other than those specified as exceptions therein.

392 4. Have not been a respondent in a final order granting an
393 injunction for protection against domestic, dating, sexual, or
394 repeat violence or stalking or exploitation of an elder or a
395 disabled person.

396 5. Have met any additional qualifications the court may
397 require to address issues specific to the parties.

398 Section 16. Subsection (3) of section 744.2003, Florida
399 Statutes, is amended to read:

400 744.2003 Regulation of professional guardians; application;
401 bond required; educational requirements.—

402 (3) Each professional guardian as defined in s. 744.102 ~~s.~~
403 ~~744.102(17)~~ and public guardian must receive a minimum of 40
404 hours of instruction and training. Each professional guardian
405 must receive a minimum of 30 hours of continuing education every
406 2 calendar years after the year in which the initial 40-hour

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407 educational requirement is met. The required continuing
408 education must include at least 2 hours on fiduciary
409 responsibilities; 2 hours on professional ethics; 1 hour on
410 advance directives; 3 hours on abuse, neglect, and exploitation;
411 and 4 hours on guardianship law. The instruction and education
412 must be completed through a course approved or offered by the
413 Office of Public and Professional Guardians. The expenses
414 incurred to satisfy the educational requirements prescribed in
415 this section may not be paid with the assets of any ward. This
416 subsection does not apply to any attorney licensed to practice
417 law in this state or an institution acting as guardian under s.
418 744.2002(7).

419 Section 17. This act shall take effect July 1, 2024.