

By Senator Simon

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1                   A bill to be entitled  
2           An act relating to supported decisionmaking authority;  
3           amending s. 393.12, F.S.; requiring a circuit court to  
4           consider certain needs and abilities of a person with  
5           a developmental disability when determining whether to  
6           appoint a guardian advocate; providing requirements  
7           for a petition to appoint a guardian advocate for a  
8           person with a developmental disability and for a court  
9           order if the court finds that such person requires  
10          such appointment; amending s. 709.2201, F.S.;  
11          authorizing an agent acting for a principal to grant a  
12          supported decisionmaking agreement; creating s.  
13          709.2209, F.S.; defining the term "supported  
14          decisionmaking agreement"; prohibiting such agreement  
15          from acting as a durable power of attorney;  
16          authorizing specified authority to a supported  
17          decisionmaking agreement; providing that certain  
18          communications shall be recognized as a communication  
19          of the principal under certain circumstances; amending  
20          s. 744.3201, F.S.; requiring a petition to determine  
21          incapacity of a person to include specified  
22          information relating to the alleged incapacitated  
23          person's use of assistance; amending s. 744.331, F.S.;  
24          providing requirements for an examining committee  
25          member when determining the alleged incapacitated  
26          person's ability to exercise his or her rights;  
27          amending s. 744.464, F.S.; authorizing a suggestion of  
28          capacity to include certain capabilities of the ward;  
29          amending s. 1003.5716, F.S.; revising the requirements

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30 for a specified process relating to individual  
31 education plans for certain students to include  
32 supported decisionmaking agreements; providing an  
33 effective date.

34  
35 Be It Enacted by the Legislature of the State of Florida:

36  
37 Section 1. Paragraph (a) of subsection (2), paragraph (a)  
38 of subsection (3), and subsection (8) of section 393.12, Florida  
39 Statutes, are amended to read:

40 393.12 Capacity; appointment of guardian advocate.—

41 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

42 (a) A circuit court may appoint a guardian advocate,  
43 without an adjudication of incapacity, for a person with  
44 developmental disabilities, if the person lacks the  
45 decisionmaking ability to do some, but not all, of the  
46 decisionmaking tasks necessary to care for his or her person or  
47 property or if the person has voluntarily petitioned for the  
48 appointment of a guardian advocate. In determining whether to  
49 appoint a guardian advocate, the court shall consider the  
50 person's unique needs and abilities, including, but not limited  
51 to, the person's ability to independently exercise his or her  
52 rights with appropriate assistance, and may only delegate  
53 decisionmaking tasks that the person lacks the decisionmaking  
54 ability to exercise. Except as otherwise specified, the  
55 proceeding shall be governed by the Florida Rules of Probate  
56 Procedure.

57 (3) PETITION.—

58 (a) A petition to appoint a guardian advocate for a person

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59 with a developmental disability may be executed by an adult  
60 person who is a resident of this state. The petition must be  
61 verified and must:

62 1. State the name, age, and present address of the  
63 petitioner and his or her relationship to the person with a  
64 developmental disability;

65 2. State the name, age, county of residence, and present  
66 address of the person with a developmental disability;

67 3. Allege that the petitioner believes that the person  
68 needs a guardian advocate and specify the factual information on  
69 which such belief is based;

70 4. Specify the exact areas in which the person lacks the  
71 decisionmaking ability to make informed decisions about his or  
72 her care and treatment services or to meet the essential  
73 requirements for his or her physical health or safety;

74 5. Specify the legal disabilities to which the person is  
75 subject; ~~and~~

76 6. Identify any other type of guardian advocacy or  
77 alternatives to guardian advocacy that the person has  
78 designated, is in currently, or has been in previously and the  
79 reasons why alternatives to guardian advocacy are insufficient  
80 to meet the needs of the person;

81 7. State whether the person uses assistance to exercise his  
82 or her rights, including, but not limited to, supported  
83 decisionmaking, and if so, why the assistance is inappropriate  
84 or insufficient to allow the person to independently exercise  
85 the person's rights; and

86 8. State the name of the proposed guardian advocate, the  
87 relationship of that person to the person with a developmental

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88 disability; the relationship that the proposed guardian advocate  
89 had or has with a provider of health care services, residential  
90 services, or other services to the person with a developmental  
91 disability; and the reason why this person should be appointed.  
92 The petition must also state if a willing and qualified guardian  
93 advocate cannot be located.

94 (8) COURT ORDER.—If the court finds the person with a  
95 developmental disability requires the appointment of a guardian  
96 advocate, the court shall enter a written order appointing the  
97 guardian advocate and containing the findings of facts and  
98 conclusions of law on which the court made its decision,  
99 including:

100 (a) The nature and scope of the person's lack of  
101 decisionmaking ability;

102 (b) The exact areas in which the individual lacks  
103 decisionmaking ability to make informed decisions about care and  
104 treatment services or to meet the essential requirements for his  
105 or her physical health and safety;

106 (c) The specific legal disabilities to which the person  
107 with a developmental disability is subject;

108 (d) The identity of existing alternatives and a finding as  
109 to the validity or sufficiency of such alternative to alleviate  
110 the need for the appointment of a guardian advocate;

111 (e)~~(d)~~ The name of the person selected as guardian advocate  
112 and the reasons for the court's selection; and

113 (f)~~(e)~~ The powers, duties, and responsibilities of the  
114 guardian advocate, including bonding of the guardian advocate,  
115 as provided in s. 744.351.

116 Section 2. Paragraph (d) is added to subsection (2) of

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117 section 709.2201, Florida Statutes, to read:

118 709.2201 Authority of agent.—

119 (2) As a confirmation of the law in effect in this state  
120 when this part became effective, such authorization may include,  
121 without limitation, authority to:

122 (d) If such authority is specifically limited, grant a  
123 supported decisionmaking agreement as defined in s. 709.2209(1).

124 Section 3. Section 709.2209, Florida Statutes, is created  
125 to read:

126 709.2209 Supported decisionmaking agreements.—

127 (1) For purposes of this section, "supported decisionmaking  
128 agreement" means an agreement in which the power of attorney  
129 grants an agent the authority to receive information and to  
130 communicate on behalf of the principal without granting the  
131 agent the authority to bind or act on behalf of the principal on  
132 any subject matter.

133 (2) A supported decisionmaking agreement is not a durable  
134 power of attorney under s. 709.2104. Any language of durability  
135 in a supported decisionmaking agreement is of no effect.

136 (3) A supported decisionmaking agreement may only include  
137 the authority to:

138 (a) Obtain information on behalf of the principal,  
139 including, but not limited to, protected health information  
140 under the Health Insurance Portability and Accountability Act of  
141 1996, 42 U.S.C. s. 1320d, as amended; educational records under  
142 the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.  
143 s. 1232g; or information protected under 42 U.S.C. s. 290dd-2 or  
144 42 C.F.R. part 2.

145 (b) Assist the principal in communicating with third

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146 parties, including conveying the principal's communications,  
147 decisions, and directions to third parties on behalf of the  
148 principal.

149 (4) A communication made by the principal with the  
150 assistance of or through an agent under a supported  
151 decisionmaking agreement that is within the authority granted to  
152 the agent may be recognized as a communication of the principal.

153 Section 4. Subsection (2) of section 744.3201, Florida  
154 Statutes, is amended to read:

155 744.3201 Petition to determine incapacity.—

156 (2) The petition must be verified and must:

157 (a) State the name, age, and present address of the  
158 petitioner and his or her relationship to the alleged  
159 incapacitated person;

160 (b) State the name, age, county of residence, and present  
161 address of the alleged incapacitated person;

162 (c) Specify the primary language spoken by the alleged  
163 incapacitated person, if known;

164 (d) State whether the alleged incapacitated person uses  
165 assistance to exercise his or her rights, including, but not  
166 limited to, supported decisionmaking, and if so, why the  
167 assistance is inappropriate or insufficient to allow the person  
168 to independently exercise the person's rights;

169 (e)~~(d)~~ Allege that the petitioner believes the alleged  
170 incapacitated person to be incapacitated and specify the factual  
171 information on which such belief is based and the names and  
172 addresses of all persons known to the petitioner who have  
173 knowledge of such facts through personal observations;

174 (f)~~(e)~~ State the name and address of the alleged

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175 incapacitated person's attending or family physician, if known;

176 (g)~~(f)~~ State which rights enumerated in s. 744.3215 the  
177 alleged incapacitated person is incapable of exercising, to the  
178 best of petitioner's knowledge. If the petitioner has  
179 insufficient experience to make such judgments, the petition  
180 must so state; and

181 (h)~~(g)~~ State the names, relationships, and addresses of the  
182 next of kin of the alleged incapacitated person, so far as are  
183 known, specifying the dates of birth of any who are minors.

184 Section 5. Paragraph (e) of subsection (3) of section  
185 744.331, Florida Statutes, is amended to read:

186 744.331 Procedures to determine incapacity.—

187 (3) EXAMINING COMMITTEE.—

188 (e) Each member of the examining committee shall examine  
189 the person. Each examining committee member must determine the  
190 alleged incapacitated person's ability to exercise those rights  
191 specified in s. 744.3215. An examining committee member may  
192 allow a person to assist in communicating with the alleged  
193 incapacitated person when requested by the court-appointed  
194 counsel for the alleged incapacitated person and shall identify  
195 the person who provided assistance and describe the nature and  
196 method of assistance provided in his or her report. In addition  
197 to the examination, each examining committee member must have  
198 access to, and may consider, previous examinations of the  
199 person, including, but not limited to, habilitation plans,  
200 school records, and psychological and psychosocial reports  
201 voluntarily offered for use by the alleged incapacitated person.  
202 Each member of the examining committee must file his or her  
203 report with the clerk of the court within 15 days after

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204 appointment.

205 Section 6. Paragraph (a) of subsection (2) of section  
206 744.464, Florida Statutes, is amended to read:

207 744.464 Restoration to capacity.—

208 (2) SUGGESTION OF CAPACITY.—

209 (a) Any interested person, including the ward, may file a  
210 suggestion of capacity. The suggestion of capacity must state  
211 that the ward is currently capable of exercising some or all of  
212 the rights which were removed, including the capability to  
213 independently exercise his or her rights with appropriate  
214 assistance.

215 Section 7. Paragraph (d) of subsection (1) of section  
216 1003.5716, Florida Statutes, is amended to read:

217 1003.5716 Transition to postsecondary education and career  
218 opportunities.—All students with disabilities who are 3 years of  
219 age to 21 years of age have the right to a free, appropriate  
220 public education. As used in this section, the term "IEP" means  
221 individual education plan.

222 (1) To ensure quality planning for a successful transition  
223 of a student with a disability to postsecondary education and  
224 career opportunities, during the student's seventh grade year or  
225 when the student attains the age of 12, whichever occurs first,  
226 an IEP team shall begin the process of, and develop an IEP for,  
227 identifying the need for transition services before the student  
228 with a disability enters high school or attains the age of 14  
229 years, whichever occurs first, in order for his or her  
230 postsecondary goals and career goals to be identified. The plan  
231 must be operational and in place to begin implementation on the  
232 first day of the student's first year in high school. This



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233 process must include, but is not limited to:

234 (d) At least 1 year before the student reaches the age of  
235 majority, provision of information and instruction to the  
236 student and his or her parent on self-determination and the  
237 legal rights and responsibilities regarding the educational  
238 decisions that transfer to the student upon attaining the age of  
239 18. The information must include the ways in which the student  
240 may provide informed consent to allow his or her parent to  
241 continue to participate in educational decisions, including:

- 242 1. Informed consent to grant permission to access  
243 confidential records protected under the Family Educational  
244 Rights and Privacy Act (FERPA) as provided in s. 1002.22.
- 245 2. Powers of attorney as provided in chapter 709.
- 246 3. Guardian advocacy as provided in s. 393.12.
- 247 4. Guardianship as provided in chapter 744.
- 248 5. Supported decisionmaking agreements as provided in s.  
249 709.2209.

250  
251 The State Board of Education shall adopt rules to administer  
252 this paragraph.

253 Section 8. This act shall take effect July 1, 2024.