

# GUARDIANSHIP PROGRAM OF DADE COUNTY, INC.

## PUBLIC GUARDIAN FOR THE 11th JUDICIAL CIRCUIT

May 9, 2025

### Very Brief History

Guardianship originated under English Common Law with the acknowledgement by the monarchy that the crown owed a duty to care for those subjects, who by virtue of physical or mental incapacity, could not protect their rights or provide for their basic needs. In the 14th century the doctrine of *parens patriae* was established. This was a legal principle from the Latin phrase meaning "parent of the country" and "the state is regarded as sovereign."

The primary intent of the original laws was to protect the community by protecting the individual.

### Challenges of Guardianship

#### Actualities:

- Guardianship is a **legal process through and through** in which a person's rights are delegated to someone else to act on their behalf. This is intended as a "**protective**" measure for individuals who have great difficulty or cannot make decisions, or and/or communicate decisions, and/or similarly have great difficulty or cannot act in their own best interest.
- **Part I of the guardianship dynamic – The stated Legislative Intent** [744.1012(2), FS]:  
"It is desirable to make available the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their needs and that alternatives to guardianship and less restrictive means of assistance, including, but not limited to, guardian advocates, be explored before a plenary guardian is appointed."
- **Part II of the dynamic – To Protect and the guardian**  
Through the legal process, a person deemed to be incapacitated is referred to as a "ward" and is subsequently under the protection of a court either directly or through a guardian appointed by the court.  
Also per Merriam-Webster dictionary, a ward is someone "that is being watched over" and/or "is protected."
- **How to Protect v. Least Restrictive and the hurdles**
  - a guardian has many compliance requirements locally with the Court, and with the State;
  - must first obtain court approval before they can act in nearly two dozen instances in law;
  - a prudent guardian is encouraged to seek court orders in other instances not explicitly delineated in statute;
  - separate are requirements for court orders regarding withholding or withdrawing life-prolonging procedures, or to execute an order not to resuscitate;
  - a guardian is required to be represented by an attorney, all aforementioned court-orders must be petitioned by the attorney, and cannot be directly submitted by the guardian;
  - family relationships and legal standing even in a guardianship;
  - managing misunderstandings and expectations, a guardianship does not "fix" underlying mental health issues;
  - almost all guardians have pro-bono cases (frequently "***encouraged***" by the Court).