

SB 682 A STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Action Date: 03/27/19
Action: Do pass with amendments, subsequent referral to Human Services be rescinded and requesting referral to Ways and Means. (Printed A-Eng.)
Vote: 7-0-0-0
Yeas: 7 - Bentz, Fagan, Gelser, Linthicum, Manning Jr, Prozanski, Thatcher
Fiscal: Fiscal impact issued
Revenue: No revenue impact
Prepared By: Channa Newell, Counsel
Meeting Dates: 2/5, 3/27

WHAT THE MEASURE DOES:

Establishes pilot program in three counties to provide counsel for persons in protective proceedings when requested by respondent, objection is made or filed, the visitor recommends appointment of counsel, or court determines respondent or protected person is in need of counsel. Specifies that payment of attorney fees comes from estate of protected person if sufficient funds exist to pay expense. Allows appointment of counsel at state expense for qualifying individuals. Requires pilot counties to submit a report to the Oregon Judicial Department no later than July 1 of each year and for Judicial Department to supply report to Legislative Assembly no later than September 15, 2022. Specifies content of report. Applies to proceedings in Multnomah and Lane counties on January 2, 2021. Applies to proceedings in Columbia County on January 2, 2022.

ISSUES DISCUSSED:

- Lane County probate court practice of appointing counsel from pool of qualified attorneys
- Need for representation for proposed protected persons
- Working Interdisciplinary Network of Guardian Stakeholders (WINGS) work group
- Process for payment of funds out of estate of person, if estate has sufficient funds to cover expense

EFFECT OF AMENDMENT:

Clarifies provisions apply to three counties.

BACKGROUND:

Guardianship is a protective proceeding created by state law in which a court gives a person or entity the duty and power to make decisions for another. The appointment of a guardian or conservator occurs after a petition is filed and a court finds that the person who is the subject of the proceedings lacks capacity to make decisions on his or her own behalf. Guardianship may be limited, but frequently removes significant decision making authority from the person and gives it to the guardian. The guardian may be making determinations on housing, daily activity, health care treatment, and finances. Current law gives courts the authority to appoint counsel for proposed protected persons, but does not require counsel.

Senate Bill 682 A sets up a pilot program to provide counsel for proposed protected persons or persons already under guardianship when the person requests counsel, an objection is made or filed, the court visitor recommends counsel, or the court deems the person needs counsel. If the estate of the person cannot pay the attorney fees for representation, then costs of representation shall be at state expense through the Office of Public Defense Services. The measure also sets up a reporting requirement that includes the number of protective proceedings initiated, guardianships granted, denied, or terminated, the number of respondents for whom counsel was appointed and the aggregate number of hours counsel spent representing people under the program.