

HB 2601 A STAFF MEASURE SUMMARY**Carrier:** Sen. Gelser**Senate Committee On Judiciary****Action Date:** 05/14/19**Action:** Do pass the A-Eng bill.**Vote:** 6-1-0-0**Yeas:** 6 - Bentz, Fagan, Gelser, Manning Jr, Prozanski, Thatcher**Nays:** 1 - Linthicum**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Channa Newell, Counsel**Meeting Dates:** 5/6, 5/14**WHAT THE MEASURE DOES:**

Requires a guardian of a protected person to use a substitute judgment standard for decision making in guardianships. Requires promotion of self-determination and encouragement of the protected person to participate in the decision-making process. Prohibits guardian from limiting a protected person's associations with others unless allowed by court or the guardian deems it necessary to avoid unreasonable harm to the protected person's health, safety, or well-being. Specifies process for modifying guardian's decisions on association. Allows court a range of remedies if it finds a guardian unreasonably limited associations, including permitting the association, modifying the powers of the guardian, removing the guardian, and awarding attorney fees. Requires guardian to become or remain personally acquainted with the protected person. Includes description of limitations on association within the annual guardian's report.

ISSUES DISCUSSED:

- Examples of abuse or restrictions by guardians
- Process for substitute decision making
- Limitations on guardian's ability to restrict contact
- Costs of professional guardianships

EFFECT OF AMENDMENT:

No amendment.

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. Guardians may make decisions on who a protected person communicates and visits with.

House Bill 2601 A limits a guardian's ability to restrict a protected person's contacts to situations in which the guardian determines it is necessary to avoid unreasonable harm to the person's health, safety, or well-being. It provides a process for challenging a restriction. Additionally, the measure adopts the standards of practice from the National Guardianship Association into Oregon's statutes, including requiring that guardians should use a substitute judgment standard for decision-making. Substitute judgment is defined as attempting to make the decision the person would have made for themselves, if the person was making the decision, and requires the guardian to make reasonable efforts to learn about the person's values, prior preferences, prior instructions, and opinions. If the guardian is unable to learn that information, the guardian then acts in a manner that is in the best

HB 2601 A STAFF MEASURE SUMMARY

interest of the person.