

Senate Bill 1568

Sponsored by Senator WAGNER, Representative PILUSO; Senators BEYER, BURDICK, DEMBROW, FREDERICK, GELSER, GOLDEN, HANSELL, HASS, MANNING JR, MONNES ANDERSON, PROZANSKI, RILEY, ROBLAN, STEINER HAYWARD, TAYLOR, Representatives ALONSO LEON, HERNANDEZ, HOLVEY, KENY-GUYER, LIVELY, MEEK, MITCHELL, NERON, NOSSE, PRUSAK, REARDON, SALINAS, SANCHEZ, SCHOUTEN, WILDE, WILLIAMS (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies protective proceedings to permit vulnerable youth guardianships for adults between 18 and 21 years of age who are not citizens or lawful permanent residents of United States and who are unable to be reunified with parent due to abuse, neglect or abandonment that occurred before adult attained 18 years of age. Creates exceptions to certain protective proceeding procedural requirements in vulnerable youth guardianships. Exempts vulnerable youth guardianships from court fees.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to vulnerable youth; amending ORS 125.005, 125.025, 125.055, 125.060, 125.065, 125.080,
3 125.085, 125.090, 125.150, 125.300, 125.305, 125.320, 125.325 and 125.730; and prescribing an ef-
4 fective date.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 125.005 is amended to read:

7 125.005. As used in this chapter:

8 (1) "Conservator" means a person appointed as a conservator under the provisions of this
9 chapter.

10 (2) "Fiduciary" means a guardian or conservator appointed under the provisions of this chapter
11 or any other person appointed by a court to assume duties with respect to a protected person under
12 the provisions of this chapter.

13 (3) "Financially incapable" means a condition in which a person is unable to manage financial
14 resources of the person effectively for reasons including, but not limited to, mental illness, mental
15 retardation, physical illness or disability, chronic use of drugs or controlled substances, chronic
16 intoxication, confinement, detention by a foreign power or disappearance. "Manage financial re-
17 sources" means those actions necessary to obtain, administer and dispose of real and personal
18 property, intangible property, business property, benefits and income.

19 (4) "Guardian" means a person appointed as a guardian under the provisions of this chapter.

20 (5) "Incapacitated" means a condition in which a person's ability to receive and evaluate infor-
21 mation effectively or to communicate decisions is impaired to such an extent that the person pres-
22 ently lacks the capacity to meet the essential requirements for the person's physical health or
23 safety. "Meeting the essential requirements for physical health and safety" means those actions
24 necessary to provide the health care, food, shelter, clothing, personal hygiene and other care with-
25 out which serious physical injury or illness is likely to occur.

26 (6) "Minor" means any person who has not attained 18 years of age.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (7) "Protected person" means a person for whom a protective order has been entered.

2 (8) "Protective order" means an order of a court appointing a fiduciary or any other order of
 3 the court entered for the purpose of protecting the person or estate of a respondent or protected
 4 person.

5 (9) "Protective proceeding" means a proceeding under this chapter.

6 (10) "Respondent" means a person for whom entry of a protective order is sought in a petition
 7 filed under ORS 125.055.

8 (11) "Visitor" means a person appointed by the court under ORS 125.150 for the purpose of
 9 interviewing and evaluating a respondent or protected person.

10 (12) **"Vulnerable youth" means a person who:**

11 **(a) Is at least 18 years of age but has not attained 21 years of age;**

12 **(b) Is not a citizen or lawful permanent resident of the United States; and**

13 **(c) Cannot be reunified with one or more of the person's parents due to abuse, neglect
 14 or abandonment that occurred when the person was a minor.**

15 **SECTION 2.** ORS 125.025 is amended to read:

16 125.025. (1) Subject to ORS 125.800 to 125.852 for adults as defined in ORS 125.802, a court
 17 having jurisdiction over a protective proceeding shall exercise continuing authority over the pro-
 18 ceeding. Subject to the provisions of ORS 125.800 to 125.852 and this chapter, the court may act
 19 upon the petition or motion of any person or upon its own authority at any time and in any manner
 20 it deems appropriate to determine the condition and welfare of the respondent or protected person
 21 and to inquire into the proper performance of the duties of a fiduciary appointed under the pro-
 22 visions of this chapter.

23 (2) A court having jurisdiction over a protective proceeding in which the respondent or pro-
 24 tected person is a minor shall consider and apply all relevant provisions of the Indian Child Welfare
 25 Act codified at 25 U.S.C. [sections] 1901 et seq.

26 (3) A court having jurisdiction over a protective proceeding may:

27 (a) Compel the attendance of any person, including respondents, protected persons, fiduciaries
 28 and any other person who may have knowledge about the person or estate of a respondent or pro-
 29 tected person. The court may require those persons to respond to inquiries and produce documents
 30 that are subject to discovery under ORCP 36.

31 (b) Appoint counsel for a respondent or protected person.

32 (c) Appoint investigators, visitors and experts to aid the court in the court's investigation.

33 (d) Exercise jurisdiction over any transaction entered into by a fiduciary to determine if a con-
 34 flict of interest existed and enter an appropriate judgment with respect to the transaction.

35 (e) Surcharge a surety for any loss caused by failure of a fiduciary to perform a fiduciary duty
 36 or any other duty imposed by this chapter, including a surcharge for attorney fees incurred by a
 37 respondent or protected person by reason of the failure.

38 (f) Require immediate delivery of a protected person or property of the protected person, in-
 39 cluding records, accounts and documents relating to that property, to the court or to a place it
 40 designates.

41 (g) Require the fiduciary to produce any and all records that might provide information about
 42 the treatment or condition of the protected person or property of the protected person.

43 (h) Remove a fiduciary whenever that removal is in the best interests of the protected person.

44 (i) Appoint a successor fiduciary when a fiduciary has died, resigned or been removed.

45 (j) Require a respondent or protected person to submit to a physical or mental examination

1 pursuant to ORCP 44.

2 (k) Make provisions for parenting time or visitation or order support for any minor who is a
3 respondent or protected person in a protective proceeding.

4 (L) Impose any conditions and limitations upon the fiduciary that the court considers appropri-
5 ate, including limitations on the duration of the appointment. Any conditions or limitations imposed
6 on the fiduciary must be reflected in the letters of appointment.

7 (m) Appoint protected person special advocates pursuant to ORS 125.120.

8 **(n) In a guardianship proceeding involving a vulnerable youth, allow a person whose at-**
9 **tendance the court compels under paragraph (a) of this subsection to attend by telephone,**
10 **video or other remote technology.**

11 (4) When a person files a petition or motion for a support order under subsection (3)(k) of this
12 section:

13 (a) The person shall state in the petition or motion, to the extent known:

14 (A) Whether there is pending in this state or any other jurisdiction any type of support pro-
15 ceeding involving the minor, including a proceeding brought under ORS 25.287, 25.501 to 25.556,
16 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 419B.400 or 419C.590 or ORS chapter 110;
17 and

18 (B) Whether there exists in this state or any other jurisdiction a support order, as defined in
19 ORS 110.503, involving the minor.

20 (b) The person shall include with the petition or motion a certificate regarding any pending
21 support proceeding and any existing support order. The person shall use a certificate that is in a
22 form established by court rule and include information required by court rule and paragraph (a) of
23 this subsection.

24 (5) When the court acts upon its own authority to order support under subsection (3)(k) of this
25 section, at least 21 days before the hearing the court shall notify the Administrator of the Division
26 of Child Support of the Department of Justice, or the branch office providing support services to the
27 county where the hearing will be held, of the hearing. Before the hearing the administrator shall
28 inform the court, to the extent known:

29 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
30 ceeding involving the minor, including a proceeding brought under ORS 25.287, 25.501 to 25.556,
31 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 419B.400 or 419C.590 or ORS chapter 110;
32 and

33 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in
34 ORS 110.503, involving the minor.

35 (6) The Judicial Department and the Department of Justice may enter into an agreement re-
36 garding how the courts give the notice required under subsection (5) of this section to the Depart-
37 ment of Justice and how the Department of Justice gives the information described in subsection
38 (5)(a) and (b) **of this section** to the courts.

39 (7) If the court finds that a conservator should be appointed, the court may exercise all the
40 powers over the estate and affairs of the protected person that the protected person could exercise
41 if present and not under disability, except the power to make a will. The court shall exercise those
42 powers for the benefit of the protected person and members of the household of the protected per-
43 son.

44 (8) The powers of the court in protective proceedings may be exercised by the court directly or
45 through a fiduciary.

1 **SECTION 3.** ORS 125.055 is amended to read:

2 125.055. (1) A petition in a protective proceeding that seeks the appointment of a fiduciary must
3 designate the type of fiduciary that the petitioner seeks to have appointed. If the petition does not
4 request the appointment of a fiduciary, or if the petition requests both the appointment of a
5 fiduciary and some other protective order, the petition must contain a statement of the nature of the
6 protective order requested. The caption of the petition must reflect the type of fiduciary whose ap-
7 pointment is requested or, if the appointment of a fiduciary is not requested, the nature of the pro-
8 tective order requested. An original and duplicate copy of the petition must be filed with the court.

9 (2) A petition in a protective proceeding must contain the following information to the extent
10 that the petitioner is aware of the information or to the extent that the petitioner is able to acquire
11 the information with reasonable effort:

12 (a) The name, age, residence address and current location of the respondent.

13 (b) The interest of the petitioner.

14 (c) The name, age and address of the petitioner and any person nominated as fiduciary in the
15 petition and the relationship of the person nominated to the respondent.

16 (d) A statement as to whether the person nominated as fiduciary:

17 (A) Has been convicted of a crime;

18 (B) Has filed for or received protection under the bankruptcy laws;

19 (C) Has caused any loss resulting in a surcharge under ORS 125.025 (3)(e) or a similar statute
20 of another jurisdiction;

21 (D) Has been removed as a fiduciary under ORS 125.225; or

22 (E) Has had a license revoked or canceled that was required by the laws of any state for the
23 practice of a profession or occupation.

24 (e) If an event listed in paragraph (d) of this subsection has occurred, a statement of the cir-
25 cumstances surrounding the event.

26 (f) If the person nominated as fiduciary is not the petitioner, a statement indicating that the
27 person nominated is willing and able to serve.

28 (g) The name and address of any fiduciary that has been appointed for the respondent by a court
29 of any state, any trustee for a trust established by or for the respondent, any person appointed as
30 a health care representative under the provisions of ORS 127.505 to 127.660 and any person acting
31 as attorney-in-fact for the respondent under a power of attorney.

32 (h) The name and address of the respondent's treating physician and any other person who is
33 providing care to the respondent.

34 (i) The factual information that:

35 **(A) Except as provided in subparagraph (B) of this paragraph,** supports the request for the
36 appointment of a fiduciary or entry of other protective order, less restrictive alternatives to the
37 appointment of a fiduciary that have been considered and why the alternatives are inadequate and
38 the names and addresses of all persons who have information that would support a finding that an
39 adult respondent is incapacitated or financially incapable.

40 **(B) If the petition seeks appointment of a guardian for a vulnerable youth, supports a**
41 **finding that the proposed protected person:**

42 **(i) Is a vulnerable youth; and**

43 **(ii) Meets the criteria established by the Judicial Department by rule in a manner con-**
44 **sistent with the findings required for special immigrant status under 8 U.S.C. 1101(a)(27)(J).**

45 (j) A statement that indicates whether the person nominated as fiduciary intends to place the

1 respondent in a mental health treatment facility, a nursing home or other residential facility.

2 (k) A general description of the estate of the respondent and the respondent's sources of income
3 and the amount of that income.

4 (L) A statement indicating whether the person nominated as fiduciary is a public or private
5 agency or organization that provides services to the respondent or an employee of a public or pri-
6 vate agency or organization that provides services to the respondent.

7 (m) A statement that indicates whether the petitioner is petitioning for plenary authority or
8 specified limited authority for the person nominated as fiduciary.

9 (3) In addition to the requirements of subsection (2) of this section:

10 (a) If a petition seeks appointment of a guardian, the petition must contain a statement on
11 whether the guardian will exercise any control over the estate of the respondent. If the guardian
12 will exercise any control over the estate of the respondent, the petition must contain a statement
13 of the monthly income of the respondent, the sources of the respondent's income, and the amount
14 of any moneys that the guardian will be holding for the respondent at the time of the appointment.

15 (b) **Except as provided in paragraph (c) of this subsection**, if the petition seeks the ap-
16 pointment of a guardian for an adult respondent, of a guardian for a minor respondent who is more
17 than 16 years of age, in cases where the court determines there is the likelihood that a petition
18 seeking appointment of a guardian for the respondent as an adult will be filed before the date that
19 the respondent attains majority, in accordance with subsection (6)(a) of this section, or as an adult,
20 or of a temporary fiduciary who will exercise the powers of a guardian for an adult respondent, the
21 petition must contain a statement notifying the court that a visitor must be appointed.

22 (c) **If the petition seeks appointment of a guardian for a vulnerable youth, the petition**
23 **must include:**

24 (A) **A statement that the court in its discretion may appoint a visitor; and**

25 (B) **Except as provided in subsection (6)(b) of this section, a declaration signed by the**
26 **vulnerable youth consenting to the appointment of the proposed guardian.**

27 (4) In addition to the requirements of subsection (2) of this section, if a petition seeks appoint-
28 ment of a conservator or a temporary fiduciary who will exercise the powers of a conservator or if
29 a petition seeks a protective order relating to the estate of the respondent, the petition must contain
30 the petitioner's estimate of the value of the estate.

31 (5) A petitioner may join parties in a petition in the manner provided by ORCP 28 for the joining
32 of defendants.

33 (6)(a) A parent or guardian of a minor may file a petition that seeks the appointment of a
34 guardian for the minor as an adult, to become effective on the date that the minor attains majority,
35 at any time within 90 days before the date that the minor attains majority or at any other time
36 determined by the court to be necessary and appropriate to ensure the ongoing protection, safety
37 and welfare of the minor upon attaining majority.

38 (b) **If a petition for the appointment of a guardian for a vulnerable youth is filed when**
39 **the respondent is a minor, the declaration of consent to appointment required under sub-**
40 **section (3)(c) of this section must be filed no later than 10 days after the respondent attains**
41 **the age of majority.**

42 (7) The court shall review a petition seeking appointment of a guardian and shall dismiss the
43 proceeding without prejudice, or require that the petition be amended, if the court determines that
44 the petition does not meet the requirements of this section.

45 **SECTION 4.** ORS 125.060 is amended to read:

1 125.060. (1) The notices required by this section must be given to all persons whose identities
2 and addresses can be ascertained in the exercise of reasonable diligence by the person required to
3 give the notice.

4 (2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other pro-
5 tective order must be given by the petitioner to the following persons:

6 (a) The respondent, if the respondent has attained 14 years of age **unless the petition is for**
7 **the appointment of a guardian for a vulnerable youth who has attained 18 years of age and**
8 **the respondent's declaration consenting to the appointment has been filed with the court.**

9 (b) The spouse, parents and adult children of the respondent.

10 (c) If the respondent does not have a spouse, parent or adult child, the person or persons most
11 closely related to the respondent.

12 (d) Any person who is cohabiting with the respondent and who is interested in the affairs or
13 welfare of the respondent.

14 (e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the
15 respondent by a court of any state, any trustee for a trust established by or for the respondent, any
16 person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and
17 any person acting as attorney-in-fact for the respondent under a power of attorney.

18 (f) If the respondent is a minor, the person who has exercised principal responsibility for the
19 care and custody of the respondent during the 60-day period before the filing of the petition.

20 (g) If the respondent is a minor and has no living parents, any person nominated to act as
21 fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.

22 (h) If the respondent is receiving moneys paid or payable by the United States through the De-
23 partment of Veterans Affairs, a representative of the United States Department of Veterans Affairs
24 regional office that has responsibility for the payments to the protected person.

25 (i) If the respondent is receiving moneys paid or payable for public assistance provided under
26 ORS chapter 411 by the State of Oregon through the Department of Human Services, a represen-
27 tative of the department.

28 (j) If the respondent is receiving moneys paid or payable for medical assistance provided under
29 ORS chapter 414 by the State of Oregon through the Oregon Health Authority, a representative of
30 the authority.

31 (k) If the respondent is committed to the legal and physical custody of the Department of Cor-
32 rections, the Attorney General and the superintendent or other officer in charge of the facility in
33 which the respondent is confined.

34 (L) If the respondent is a foreign national, the consulate for the respondent's country.

35 (m) Any other person that the court requires.

36 (3) Notice of a motion for the termination of the protective proceedings, for removal of a
37 fiduciary, for modification of the powers or authority of a fiduciary, for approval of a fiduciary's
38 actions or for protective orders in addition to those sought in the petition must be given by the
39 person making the motion to the following persons:

40 (a) The protected person, if the protected person has attained 14 years of age.

41 (b) Any person who has filed a request for notice in the proceedings.

42 (c) Except for a fiduciary who is making a motion, any fiduciary who has been appointed for the
43 protected person.

44 (d) If the protected person is receiving moneys paid or payable by the United States through the
45 Department of Veterans Affairs, a representative of the United States Department of Veterans Af-

1 fairs regional office that has responsibility for the payments to the protected person.

2 (e) If the protected person is committed to the legal and physical custody of the Department of
3 Corrections, the Attorney General and the superintendent or other officer in charge of the facility
4 in which the protected person is confined.

5 **(f) If the protected person is a vulnerable youth, the consulate of the vulnerable youth's**
6 **country of nationality or, if unknown, the consulate of the vulnerable youth's last country**
7 **of residence prior to the United States of America.**

8 [(f)] (g) Any other person that the court requires.

9 (4) A request for notice under subsection (3)(b) of this section must be in writing and include
10 the name, address and phone number of the person requesting notice. A copy of the request must
11 be mailed by the person making the request to the petitioner or to the fiduciary if a fiduciary has
12 been appointed. The original request must be filed with the court. The person filing the request must
13 pay the fee specified by ORS 21.135.

14 (5) A person who files a request for notice in the proceedings in the manner provided by sub-
15 section (4) of this section is entitled to receive notice from the fiduciary of any motion specified in
16 subsection (3) of this section and of any other matter to which a person listed in subsection (2) of
17 this section is entitled to receive notice under a specific provision of this chapter.

18 (6) If the Department of Human Services is nominated as guardian for the purpose of consenting
19 to the adoption of a minor, the notice provided for in this section must also be given to the minor's
20 brothers, sisters, aunts, uncles and grandparents.

21 (7) In addition to the requirements of subsection (2) of this section, notice of the filing of a pe-
22 tition for the appointment of a guardian for a person who is alleged to be incapacitated must be
23 given by the petitioner to the following persons:

24 (a) Any attorney who is representing the respondent in any capacity.

25 (b) If the respondent is a resident of a nursing home or residential facility, or if the person
26 nominated to act as fiduciary intends to place the respondent in a nursing home or residential fa-
27 cility, the office of the Long Term Care Ombudsman.

28 (c) If the respondent is a resident of a mental health treatment facility or a residential facility
29 for individuals with developmental disabilities, or if the person nominated to act as fiduciary intends
30 to place the respondent in such a facility, the system described in ORS 192.517 (1).

31 (8) In addition to the requirements of subsection (3) of this section, in a protective proceeding
32 in which a guardian has been appointed, notice of the motions specified in subsection (3) of this
33 section, and the address, telephone number and other contact information of the protected person,
34 must be given by the person making the motion to the following persons:

35 (a) Any attorney who represented the protected person at any time during the protective pro-
36 ceeding.

37 (b) If the protected person is a resident of a nursing home or residential facility, or if the motion
38 seeks authority to place the protected person in a nursing home or residential facility, the office of
39 the Long Term Care Ombudsman.

40 (c) If the protected person is a resident of a mental health treatment facility or a residential
41 facility for individuals with developmental disabilities, or if the motion seeks authority to place the
42 protected person in such a facility, the system described in ORS 192.517 (1).

43 (9) A respondent or protected person may not waive the notice required under this section.

44 (10) The requirement that notice be served on an attorney for a respondent or protected person
45 under subsection (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney

1 receiving the notice to represent the respondent or protected person in the protective proceeding.

2 **SECTION 5.** ORS 125.065 is amended to read:

3 125.065. (1) **Except as provided in ORS 125.060**, notice of the filing of a petition must be per-
4 sonally served on any respondent who has attained 14 years of age. Notice of a petition must be
5 personally served on the parents of a respondent if the petition is based on the fact that the re-
6 spondent is a minor. The notice may not be served on the respondent by the visitor appointed by
7 the court. The notice shall be written in language reasonably understandable by the respondent. The
8 notice must be printed in type size equal to at least 12-point type.

9 (2) Except as provided in subsection (1) of this section, the notices required under ORS 125.060
10 may be mailed to the last-known address of the person. If the address or identity of any person is
11 not known and cannot be ascertained with reasonable diligence, notice of the filing of a petition
12 may be given by publishing at least once a week for three consecutive weeks a copy of the notice
13 in a newspaper having general circulation in the county where the hearing is to be held. The last
14 publication of the notice must be at least 15 days before the final date for the filing of objections.

15 (3) The date of personal service or mailing under this section must be at least 15 days before
16 the final date for the filing of objections to the petition or motion. If the proceedings are subject to
17 the Uniform Child Custody Jurisdiction and Enforcement Act provided for in ORS 109.701 to 109.834,
18 the date of service or mailing must be at least 21 days before the final date for the filing of ob-
19 jections to the petition or motion.

20 (4) The court for good cause shown may provide for a different method or time of giving notice
21 under this section.

22 (5) Proof of the giving of notice must be filed in the proceeding before the court enters any order
23 on a petition or motion.

24 **SECTION 6.** ORS 125.080 is amended to read:

25 125.080. (1) The court may require that a hearing be held on any petition or motion in a pro-
26 tective proceeding.

27 (2) A hearing must be held on a petition or motion if an objection is filed to the petition or
28 motion and the objection is not withdrawn before the time scheduled for the hearing.

29 (3) A hearing must be held on a motion to modify a guardian's powers under ORS 125.323.

30 (4) The respondent or protected person may appear at a hearing in person or by counsel.

31 **(5) If the hearing is regarding a petition for appointment of a guardian for a vulnerable**
32 **youth or a petition involving a vulnerable youth guardianship, the court:**

33 **(a) Shall allow the respondent or protected person, proposed guardian or guardian and**
34 **any other witness to appear in person or by telephone, video or other remote technology;**

35 **(b)(A) May take testimony from or confer with the respondent or protected person and**
36 **may exclude from the conference others if the court finds that doing so would be in the best**
37 **interests of the respondent or protected person; and**

38 **(B) Notwithstanding subparagraph (A) of this paragraph, shall permit any attorney for**
39 **the respondent or protected person to attend the conference and the conference must be**
40 **reported;**

41 **(c) May not inquire into the nationality or current immigration status of the proposed**
42 **guardian, guardian or any other witness; and**

43 **(d) May not inquire about any prior immigration status of the respondent or protected**
44 **person or about the manner or place in which the respondent or protected person entered**
45 **the United States of America.**

1 [(5)] (6) If the court requires that a hearing be held on a petition, or a hearing is otherwise re-
 2 quired under this section, the court may appoint counsel for the respondent unless the respondent
 3 is already represented by counsel.

4 **SECTION 7.** ORS 125.085 is amended to read:

5 125.085. (1) The court may remove a fiduciary on the motion of any person who is entitled to file
 6 an objection to a petition under the provisions of ORS 125.075, on a motion of the Long Term Care
 7 Ombudsman or upon the court's own motion.

8 (2) On motion of the fiduciary, the court may accept the resignation of the fiduciary and make
 9 any other order that may be appropriate, including appointment of a successor fiduciary.

10 (3) **Except as provided in subsection (5) of this section**, upon motion by any person who is
 11 entitled to file an objection to a petition under the provisions of ORS 125.075, on a motion of the
 12 Long Term Care Ombudsman or upon the court's own motion, the court may order a modification
 13 of the powers or authority of the fiduciary or termination of the protective proceedings.

14 (4)(a) When the Long Term Care Ombudsman files a motion under this section, the ombudsman
 15 shall disclose to the court only:

16 (A) Such information as is allowed under ORS 441.407; and

17 (B) The minimum amount of protected information about the resident who is the subject of the
 18 motion that the ombudsman believes in good faith is reasonably necessary to prevent or lessen a
 19 serious and imminent threat to the health or safety of a resident of a long term care facility, resi-
 20 dential facility or adult foster home.

21 (b) Any protected information disclosed by the ombudsman under this subsection shall remain
 22 confidential and must be identified and marked by the ombudsman as confidential and protected in-
 23 formation that is subject to the requirements of this subsection.

24 (c) Protected information disclosed under this subsection is subject to inspection only by the
 25 parties to the proceeding and their attorneys as provided in paragraph (d) of this subsection. Pro-
 26 tected information disclosed under this subsection is not subject to inspection by members of the
 27 public except pursuant to a court order entered after a showing of good cause.

28 (d) The court may enter an order allowing inspection of protected information subject to dis-
 29 closure under this subsection upon the filing of a written request for inspection and the payment
 30 of any fees or costs charged to copy the protected information.

31 (e) Notwithstanding ORS 125.155 (4), to the extent that the report of a visitor appointed by the
 32 court under ORS 125.150 contains protected information that is subject to the requirements of this
 33 subsection, the report in its entirety shall be considered subject to the requirements of this sub-
 34 section and may be disclosed only as provided in paragraphs (c) and (d) of this subsection.

35 **(5) If the guardianship is for a vulnerable youth:**

36 (a) **The court may modify the guardianship upon motion of the protected person or upon**
 37 **the court's own motion. The motion seeking to modify the guardianship must be supported**
 38 **by a motion setting forth the facts supporting the motion. The motion and supporting dec-**
 39 **laration must be served on the guardian and, if appropriate, any proposed guardian.**

40 (b) **A guardian may seek to have the guardianship modified at any time by filing a motion**
 41 **with the court that is supported by a declaration establishing that a substantial change has**
 42 **occurred in the circumstances of the protected person or the guardian and that the re-**
 43 **quested modification would serve the best interests of the protected person.**

44 **SECTION 8.** ORS 125.090 is amended to read:

45 125.090. (1) A protected person is entitled to the same rights and procedures provided in the

1 original proceedings when a motion to terminate the protective proceeding is filed and a fiduciary
 2 opposes the motion. The fiduciary has the burden of proving by clear and convincing evidence that
 3 a protected person continues to be incapacitated or financially incapable if a motion to terminate
 4 a protective proceeding is filed and the fiduciary opposes the motion. A visitor must be appointed
 5 if a motion for termination of a guardianship is filed and objections are filed to the motion. A visitor
 6 may be appointed if a motion for termination of a conservatorship is filed.

7 (2) The court may terminate protective proceedings upon motion after determining any of the
 8 following:

9 (a) The appointment of a fiduciary or other protective order was made because the protected
 10 person was a minor, and the protected person has attained the age of majority.

11 (b) The appointment of a fiduciary or other protective order was made because the protected
 12 person was incapacitated, and the protected person is no longer incapacitated.

13 (c) The appointment of a fiduciary or other protective order was made because the protected
 14 person was financially incapable, and the protected person is no longer financially incapable or the
 15 conditions of ORS 125.535 have been met.

16 (d) The protected person has died.

17 (e) The best interests of the protected person would be served by termination of the proceedings.

18 **(f) If the appointment of a guardian was made because the protected person was a vul-**
 19 **nerable youth:**

20 **(A) The protected person has attained 21 years of age;**

21 **(B) The protected person moved the court to terminate the guardianship; or**

22 **(C)(i) The guardian or other person moved the court to terminate the guardianship;**

23 **(ii) The motion is supported by a declaration establishing that a substantial change has**
 24 **occurred in the circumstances of the vulnerable youth or of the guardian; and**

25 **(iii) The best interests of the protected person would be served by termination of the**
 26 **guardianship.**

27 (3) The court shall terminate a protective proceeding by entry of a general judgment.

28 **SECTION 9.** ORS 125.150 is amended to read:

29 125.150. (1)(a) The court shall appoint a visitor upon the filing of a petition in a protective
 30 proceeding that seeks the appointment of:

31 (A) A guardian for an adult respondent;

32 (B) A guardian for a minor respondent who is more than 16 years of age, in cases where the
 33 court determines there is the likelihood that a petition seeking appointment of a guardian for the
 34 respondent as an adult will be filed before the date that the respondent attains majority, in ac-
 35 cordance with ORS 125.055 (6)(a), or as an adult; or

36 (C) A temporary fiduciary who will exercise the powers of a guardian for an adult respondent.

37 **(b) Notwithstanding paragraph (a) of this subsection, if a petition in a protective pro-**
 38 **ceeding seeks the appointment of a guardian for a respondent because the respondent is, or,**
 39 **if the respondent is a minor, will be a vulnerable youth, the court in its discretion may ap-**
 40 **point a visitor.**

41 ~~[(b)]~~ (c) The court may appoint a visitor in any other protective proceeding or in a proceeding
 42 under ORS 109.329.

43 (2) A visitor may be an officer, employee or special appointee of the court. The person appointed
 44 may not have any personal interest in the proceedings. The person appointed must have training or
 45 expertise adequate to allow the person to appropriately evaluate the functional capacity and needs

1 of a respondent or protected person, or each petitioner and the person to be adopted under ORS
2 109.329. The court shall provide a copy of the petition and other filings in the proceedings that may
3 be of assistance to the visitor.

4 (3) A visitor appointed by the court under this section shall interview a person nominated or
5 appointed as fiduciary and the respondent or protected person, or each petitioner and the person to
6 be adopted under ORS 109.329, personally at the place where the respondent or protected person,
7 or each petitioner or the person to be adopted under ORS 109.329, is located.

8 (4) Subject to any law relating to confidentiality, the visitor may interview any physician,
9 naturopathic physician or psychologist who has examined the respondent or protected person, or
10 each petitioner under ORS 109.329, the person or officer of the institution having the care, custody
11 or control of the respondent or protected person, or each petitioner under ORS 109.329, and any
12 other person who may have relevant information.

13 (5) If requested by a visitor under subsection (4) of this section, a physician, naturopathic phy-
14 sician or psychologist who has examined the respondent or protected person, or each petitioner
15 under ORS 109.329, may, with patient authorization or, in the case of a minor respondent, with the
16 authorization of the minor's parent or the person having custody of the minor, or in response to a
17 court order in accordance with ORCP 44 or a subpoena under ORCP 55, provide any relevant in-
18 formation the physician, naturopathic physician or psychologist has regarding the respondent or
19 protected person, or each petitioner under ORS 109.329.

20 (6) A visitor shall determine whether it appears that the respondent or protected person, or each
21 petitioner or the person to be adopted under ORS 109.329, is able to attend the hearing and, if able
22 to attend, whether the respondent or protected person, or each petitioner or the person to be
23 adopted under ORS 109.329, is willing to attend the hearing.

24 (7) If a petition is filed seeking the appointment of a guardian for an adult respondent, a visitor
25 shall investigate the following matters:

26 (a) The inability of the respondent to provide for the needs of the respondent with respect to
27 physical health, food, clothing and shelter;

28 (b) The location of the respondent's residence and the ability of the respondent to live in the
29 residence while under guardianship;

30 (c) Alternatives to guardianship considered by the petitioner and reasons why those alternatives
31 are not available;

32 (d) Health or social services provided to the respondent during the year preceding the filing of
33 the petition, when the petitioner has information as to those services;

34 (e) The inability of the respondent to resist fraud or undue influence; and

35 (f) Whether the respondent's inability to provide for the needs of the respondent is an isolated
36 incident of negligence or improvidence, or whether a pattern exists.

37 (8) If a petition is filed seeking the appointment of a fiduciary, a visitor shall determine whether
38 the respondent objects to:

39 (a) The appointment of a fiduciary; and

40 (b) The nominated fiduciary or prefers another person to act as fiduciary.

41 (9) If a petition is filed seeking the appointment of a conservator in addition to the appointment
42 of a guardian, a visitor shall investigate whether the respondent is financially incapable. The visitor
43 shall interview the person nominated to act as conservator and shall interview the respondent per-
44 sonally at the place where the respondent is located.

45 (10) A visitor shall determine whether the respondent or protected person, or each petitioner

1 or the person to be adopted under ORS 109.329, wishes to be represented by counsel and, if so,
 2 whether the respondent or protected person, or each petitioner or the person to be adopted under
 3 ORS 109.329, has retained counsel and, if not, the name of an attorney the respondent or protected
 4 person, or each petitioner or the person to be adopted under ORS 109.329, wishes to retain.

5 (11) If the respondent or protected person, or each petitioner or the person to be adopted under
 6 ORS 109.329, has not retained counsel, a visitor shall determine whether the respondent or protected
 7 person, or each petitioner or the person to be adopted under ORS 109.329, desires the court to ap-
 8 point counsel.

9 (12) If the respondent or protected person, or each petitioner or the person to be adopted under
 10 ORS 109.329, does not plan to retain counsel and has not requested the appointment of counsel by
 11 the court, a visitor shall determine whether the appointment of counsel would help to resolve the
 12 matter and whether appointment of counsel is necessary to protect the interests of the respondent
 13 or protected person, or each petitioner or the person to be adopted under ORS 109.329.

14 **SECTION 10.** ORS 125.300 is amended to read:

15 125.300. (1)(a) **Except as provided in paragraph (b) of this subsection,** a guardian may be
 16 appointed for an adult person only as is necessary to promote and protect the well-being of the
 17 protected person. A guardianship for an adult person must be designed to encourage the develop-
 18 ment of maximum self-reliance and independence of the protected person and may be ordered only
 19 to the extent necessitated by the person's actual mental and physical limitations.

20 **(b) A guardian may be appointed for an adult person who is a vulnerable youth if there**
 21 **is clear and convincing evidence that the person is a vulnerable youth who meets the criteria**
 22 **established by the Judicial Department by rule in a manner consistent with the findings re-**
 23 **quired for special immigrant status under 8 U.S.C. 1101(a)(27)(J). A guardianship for a vul-**
 24 **nerable youth must be designed to encourage the development of maximum self-reliance and**
 25 **independence of the vulnerable youth and may be ordered only to the extent necessitated by**
 26 **the circumstances justifying the appointment of a guardian for the vulnerable youth.**

27 (2) An adult protected person for whom a guardian has been appointed is not presumed to be
 28 incompetent.

29 (3) A protected person retains all legal and civil rights provided by law except those that have
 30 been expressly limited by court order or specifically granted to the guardian by the court. Rights
 31 retained by the person include but are not limited to the right to contact and retain counsel and to
 32 have access to personal records.

33 **SECTION 11.** ORS 125.305 is amended to read:

34 125.305. (1) After determining that conditions for the appointment of a guardian have been es-
 35 tablished, the court may appoint a guardian as requested if the court determines by clear and con-
 36 vincing evidence that:

37 (a) The respondent is a minor in need of a guardian, [or] the respondent is incapacitated **or the**
 38 **respondent is a vulnerable youth who meets the criteria established by the Judicial Depart-**
 39 **ment by rule in a manner consistent with the findings required for special immigrant status**
 40 **under 8 U.S.C. 1101(a)(27)(J);**

41 (b) The appointment is necessary as a means of providing continuing care and supervision of the
 42 respondent; and

43 (c) The nominated person is both qualified and suitable, and is willing to serve.

44 (2) The court shall make a guardianship order that is no more restrictive upon the liberty of the
 45 protected person than is reasonably necessary to protect the person. In making the order the court

1 shall consider the information in the petition, the report of the visitor, the report of any physician,
 2 naturopathic physician or psychologist who has examined the respondent, if there was an examina-
 3 tion, and the evidence presented at any hearing.

4 (3) The court may require that a guardian post bond.

5 (4) The Department of Human Services may be appointed guardian of a minor if the minor has
 6 no living parents and if no willing, qualified and suitable relative or other person has petitioned the
 7 court for appointment as a guardian.

8 **SECTION 12.** ORS 125.320 is amended to read:

9 125.320. (1) A guardian may not authorize the sterilization of the protected person.

10 (2) A guardian may not use funds from the protected person's estate for room and board that
 11 the guardian or guardian's spouse, parent or child have furnished the protected person unless the
 12 charge for the service is approved by order of the court before the payment is made.

13 (3)(a) Before a guardian may change the abode of an adult protected person or place an adult
 14 protected person in a mental health treatment facility, a nursing home or other residential facility,
 15 the guardian must file with the court and serve a statement declaring that the guardian intends to
 16 make the change of abode or placement in the manner set forth in paragraph (b) of this subsection.

17 (b)(A) The statement must be filed and served in the manner provided for serving a motion under
 18 ORS 125.065 to the persons specified in ORS 125.060 (3) and (8) at least 15 days prior to each change
 19 of abode or placement of the protected person.

20 (B) When the guardian determines that the change of abode or placement must occur in less
 21 than 15 days to protect the immediate health, welfare or safety of the protected person or others,
 22 the statement shall declare that the change of abode or placement must occur in less than 15 days
 23 to protect the immediate health, welfare or safety of the protected person or others. The statement
 24 must be filed and served with as much advance notice as possible, in no event later than two judicial
 25 days after the change of abode or placement occurs. The guardian may make the change of abode
 26 or placement prior to a hearing on any objection.

27 (c) In addition to the requirements of ORS 125.070 (1), the notice given to the protected person
 28 must clearly indicate the manner in which the protected person may object to the proposed place-
 29 ment.

30 (d) The court shall schedule a hearing on any objection to a statement filed under this sub-
 31 section made in the manner provided by ORS 125.075 for presenting objections to a petition or mo-
 32 tion in a protective proceeding. If no objection is made, the guardian may change the abode of the
 33 adult protected person or place the adult protected person in a mental health treatment facility, a
 34 nursing home or other residential facility without further court order.

35 (e) The requirement that notice be served on an attorney for a protected person under ORS
 36 125.060 (8) does not impose any responsibility on the attorney receiving the notice to represent the
 37 protected person in the protective proceeding.

38 **(4) A guardian for a protected person who is a vulnerable youth may not possess the**
 39 **vulnerable youth's identity documents.**

40 **SECTION 13.** ORS 125.325 is amended to read:

41 125.325. (1) Not later than 30 days following each anniversary of appointment, a guardian for
 42 an adult protected person shall file with the court a written report. The report must include a dec-
 43 laration under penalty of perjury in the form required by ORCP 1 E, or an unsworn declaration
 44 under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the United
 45 States. Copies of the guardian's report must be given to those persons specified in ORS 125.060 (3).

1 **Except as provided in subsection (6) of this section,** the report [*shall*] **must** be in substantially
2 the following form:

3 _____

4
5 IN THE _____ COURT _____ COUNTY,
6 STATE OF OREGON
7 DEPARTMENT OF PROBATE

8 In the Matter of the) No. _____
9 Guardianship of)
10 _____,)
11 (Name of protected)
12 person))
13 A Protected)
14 Person.)

15 GUARDIAN'S REPORT

16 I am the guardian for the person named above, and I make the following report to the court as
17 required by law:

18 1. My name is _____.

19 2. My address and telephone number are:

20 _____

21 _____

22 Phone _____

23 3. The name, if applicable, and address of the place where the person now resides are:

24 _____

25 _____

26 4. The person is currently residing at the following type of facility or residence:

27 _____

28 5. The person is currently engaged in the following programs and activities and receiving the
29 following services (brief description):

30 _____

31 6. I was paid for providing the following items of lodging, food or other services to the person:

32 _____

33 _____

34 7. The name of the person primarily responsible for the care of the person at the person's place
35 of residence is:

36 _____

37 8. The name and address of any hospital or other institution where the person is now admitted
38 on a temporary or permanent basis are:

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40 _____

41 9. The person's physical condition is as follows (brief description):

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44 10. The person's mental condition is as follows (brief description):

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11. Facts that support the conclusion that the person is incapacitated include the following:

12. I made the following contacts with the person during the past year (brief description):

13. I limited the person's association with _____ (Please specifically name any limitations and briefly describe the limitation):

14. I made the following major decisions on behalf of the person during the past year (brief description):

15. I believe the guardianship should or should not continue because:

16. At the time of my last report, I held the following amount of money on behalf of the person: \$_____. Since my last report, I received the following amount of money on behalf of the person: \$_____. I spent the following amount of money on behalf of the person: \$_____. I now hold the following amount of money on behalf of the person: \$_____.

17. A true copy of this report will be given to the person, any conservator for the person and any other person who has requested notice.

18. Since my last report:

(a) I have been convicted of the following crimes (not including traffic violations):

(b) I have filed for or received protection from creditors under the Federal Bankruptcy Code (yes or no): _____.

(c) I have had a professional or occupational license revoked or suspended (yes or no): _____.

(d) I have had my driver license revoked or suspended (yes or no): _____.

19. Since my last report, I have delegated the following powers over the protected person for the following periods of time (provide name of person powers delegated to):

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated this ____ day of _____, 2_____.

Guardian

NOTICE: ANY PERSON INTERESTED IN THE AFFAIRS OR WELFARE OF THE PROTECTED PERSON WHO IS THE SUBJECT OF THIS REPORT WHO HAS CONCERNS ABOUT THIS REPORT OR THE GUARDIAN'S PERFORMANCE MAY CONTACT THE COURT AS FOLLOWS:

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(2) If the guardian indicates in the report under subsection (1) of this section that the guardianship should not continue or fails to provide adequate information in the report supporting the continuing need for the guardianship, the court shall order the guardian to supplement the report or to file a motion to terminate the protective proceeding under ORS 125.090.

(3) Failure of the guardian to comply with an order under subsection (2) of this section before the 30th day following the date of the order is grounds for removal under ORS 125.225 (1).

(4) If the guardian fails to comply with an order issued under subsection (2) of this section, the court, on its own motion or on the petition of any other person, shall order the guardian to appear and show cause why the guardian should not be removed.

(5) The court shall serve a copy of any order issued under subsection (2) or (4) of this section and a copy of the report filed under subsection (1) of this section and supplemental materials, if any, upon those persons entitled to notice under ORS 125.060 (3).

(6) If a guardian was appointed because the protected person is a vulnerable youth, the court may in its discretion:

(a) Require a guardian for a vulnerable youth to file written reports with the court more frequently than required under subsection (1) of this section; or

(b) Permit the report to be in an alternate form approved in advance by the court.

SECTION 14. ORS 125.730 is amended to read:

125.730. (1) No fee shall be charged or received by any court having probate jurisdiction for the filing of any petition asking for the appointment of the county public guardian and conservator as the guardian or conservator or for any official service performed by that court in the course of the guardianship or conservatorship proceedings.

(2) No fee shall be charged or received by any court having probate jurisdiction for the filing of any petition asking for the appointment of a guardian for a vulnerable youth or for any official service performed by that court in the course of the guardianship.

SECTION 15. This 2020 Act takes effect on the 91st day after the date on which the 2020 regular session of the Eightieth Legislative Assembly adjourns sine die.