

SB 578 A STAFF MEASURE SUMMARY

Carrier: Sen. Dembrow

**Senate Committee On Judiciary and Ballot Measure 110
Implementation**

Action Date: 03/25/21
Action: Do pass with amendments. (Printed A-Eng.)
Vote: 4-3-0-0
Yeas: 4 - Dembrow, Gelser, Manning Jr, Prozanski
Nays: 3 - Heard, Linthicum, Thatcher
Fiscal: Fiscal impact issued
Revenue: No revenue impact
Prepared By: Channa Newell, Counsel
Meeting Dates: 2/23, 3/25

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 court 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 Judicial Department to provide report to Legislative Assembly no later than September 15, 2024. Specifies content of report. Applies to proceedings in Multnomah and Lane counties on or after January 2, 2022. Applies to proceedings in Columbia County on or after January 2, 2023. Applies to proceedings in other counties on or after January 2, 2024.

ISSUES DISCUSSED:

- Rights of persons in protective proceedings
- Court authority to appoint counsel but no funding for reimbursement
- Collection of data from counties in pilot programs

EFFECT OF AMENDMENT:

Revises content and process of report.

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 person. 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 their 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 578 A creates 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, the number of respondents for whom counsel was appointed, and the aggregate number of hours counsel spent representing people under the program.