

**SB 578 and 202**  
**Funding Court Appointed Attorneys**  
**in Protective Proceedings – Pilot Project**  
Senate Judiciary Committee  
Testimony of Judge Lauren Holland  
Feb 23, 2021

Chair Prozanski, Vice-Chair Thatcher, Members of the Senate Judiciary Committee:

My name is Lauren Holland and I use the pronouns she and her. I have the privilege of serving as a Circuit Court Judge in Lane County, the Second Judicial District of Oregon. I have been on the bench since elected in 1992. In addition to being a general trial judge hearing civil, criminal and family law cases, I hear all of the protective proceeding cases in Lane County. I am the Chair of Oregon WINGS – a statewide interdisciplinary guardianship advisory group and I also serve as a Commissioner on the ABA Commission on Law and Aging. I am here to support the passage of Senate Bills 578 and 202 which relate to court appointed attorneys for persons who are the subject of guardianships and conservatorships and the funding of those attorneys.

A word about terms used here: a “Respondent” is the person who is the subject of a petition filed for guardianship or conservatorship. They become, and are called, a “Protected Person” only if the guardianship or conservatorship is granted.

I am presenting this information as a judge with many years experience working with these cases and the people impacted by these cases. I am not speaking on behalf of the Oregon Judicial Department.

Protective proceedings are unlike other areas of the law where disputes between opposing parties are brought before the court and each party advocates for their position in the dispute. In protective proceedings, only one person is the subject of the proceeding: that person is alleged to be incapacitated or incapable of handling their own property and finances. By the very nature of the case, Respondents are not in a position to advocate for themselves.

Adults subject to guardianship and conservatorship may be persons with dementia, intellectual disabilities, mental illness, traumatic brain injuries. These persons may be at risk of harm, yet at the same time they risk a drastic loss of rights if the court appoints a guardian or conservator to address that harm.

Guardianship law grants authority to a person, a guardian or conservator, to make decisions for another. Guardianship impacts the fundamental rights of the person subject to it. Decisions by guardians may determine:

- where they will live;
- who they may see;
- who has access to them;
- how their money is spent;
- how their property is used;

decisions that affect the daily life of a protected person.

And there are also the irreversible decisions:

Decisions to involuntarily remove a protected person from their home and place them in a locked facility for the rest of their life;

Decisions to force a protected person to undergo surgery – such as an amputation;

Decisions to stop medical treatment;

Decisions to remove life support.

Guardians may be close family members, a formerly estranged family member, a neighbor, a friend, a stranger (that is, a professional fiduciary they have never met). Each one may be authorized to make these decisions for the protected person.

Notice that I included removing a protected person from their home as one of these irreversible decisions. My experience has been that not infrequently when a person is unwillingly forced from their home and placed in a facility and **ESPECIALLY** when their home is also sold by a conservator so there is really no hope that they will ever leave the facility, they do not live much longer.

The legislature has granted the court the authority to appoint an attorney to represent the Respondent or Protected Person pursuant to ORS 125.025(3)(b).

The statute provides that the court having jurisdiction in the case “may” appoint counsel for a respondent or protected person. However, there are no state resources, no state funds, to pay attorneys for this representation.

If a Respondent cannot afford to pay for a court appointed attorney from their own assets, in reality, the court can only appoint when local probate attorneys are willing to take the case pro bono.

We have over 14,000 open guardianship/conservatorship cases throughout our state – impacting Oregonians in every district.

As of February 14, 2021, there are 14,252 open protective proceeding cases statewide, approximately 2/3 of those cases have adults as protected persons and about 1/3 of the cases have minors as protected persons.

A vast majority of these cases are guardianship cases: approx. 85% of these cases involve guardianships - 70% are solely guardianship cases, 15% are combined guardianship AND conservatorship cases and 13% are solely conservatorship cases. (2% are not yet identified).

Unlike most other cases, these cases can remain open from less than a year to well over 25 years. Over 50 % of guardianship/conservatorship cases have been open for over 5 years. Once under a protective proceeding, a person often remains subject to that proceeding for the rest of their life.

If we look at other types of cases where the court appoints attorneys, such as criminal cases, juvenile court cases and involuntary civil commitment cases, there are not only safeguards required but also state resources made available to put them into effect. Consider, if you will, involuntary civil commitments which can authorize involuntary placement into a locked facility for up to a maximum amount of time - 6 months in Oregon, while guardianships may allow guardians to place a person in such a locked facility for the rest of their life. We are talking about liberty interests that implicate due process safeguards.

Last year, in 2020, Lane County had 108 new guardianship and conservatorship cases filed. I was able to appoint experienced probate attorneys in 29 pro bono cases.

The year before, in 2019, there were 106 new guardianship and conservatorship cases filed in Lane County and I was able to appoint attorneys in 32 pro bono cases.

The impact of having an attorney represent the Respondent is significant. When Respondents are represented by an attorney there was greater exploration of less restrictive alternatives;

- a number of petitions for guardianship were withdrawn;
- other petitions were amended to propose a different person, a more suitable person to act as the guardian; and,
- still other petitions were amended to further restrict the authority being sought by a proposed guardian or conservator.

If a hearing needed to be held, the attorney for the Respondent made a significant difference to the benefit of their client.

These are complex cases. They often involve medical conditions, both physical and cognitive; difficult and complicated family dynamics; and governmental agencies with their own rules and regulations.

Navigating these cases is no easy task. They are challenging and with fundamental rights in the balance.

I support this effort to provide funding for the pilot project for court appointed attorneys for respondents and protected persons. I understand that there is discussion about what data is available and can be collected in these cases- and that is important. The focus of the bill is ensuring the protection of the rights of vulnerable Oregonians by funding the appointment of attorneys for respondents and protected persons when they cannot afford one, in this pilot project. I support SB 578 and 202.

Thank you for the opportunity to present this information. I am glad to answer any questions you may have.

