

SB 528 -2 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 1/26, 3/29, 4/3

WHAT THE MEASURE DOES:

Declares that it is the policy of the State of Oregon that the least restrictive alternatives appropriate for meeting a person's needs be explored prior to the appointment of a fiduciary in a protective proceeding. Provides examples of less restrictive alternatives. Requires a fiduciary in a protective proceeding to file a motion to continue either the protective proceeding or a motion to terminate the protective proceeding every five years. Specifies what information must be in the motion and provides requirements for notice. States the fiduciary has the burden of proving by clear and convincing evidence that a protected person is or continues to be incapacitated or financially incapable. Defines "supported decision making." Requires a petition to include information regarding how less restrictive alternatives were explored and why the appointment of a fiduciary is still necessary. Provides the right for the respondent to have an attorney appointed by the court and requires this information to be included in the notice. Requires less restrictive alternatives to guardianship be considered. Expands the limitations on a guardian's actions and legal decision-making authority. Provides that a conservator who sells a protected person's principal residence must consult with the protected person regarding the sale. Modifies statutory forms to conform with revisions. Clarifies language.

ISSUES DISCUSSED:

- Partnership with Disability Rights Oregon to ensure the rights of a protected person are actually protected
- Certification process appears inconsistent and overburdensome
- Many rural areas don't have certified guardianship programs
- Cost concerns, especially with the every five-year review process, which would cost \$3,000-\$5,000 every time (without a professional guardian)
- Many guardianships are overreaching
- Goal of maintaining the maximum amount of independence for a person that is possible
- In 2021, the a special immigration status was created for 18-21 year-olds for guardianships; this bill incorrectly include that category of guardianship
- Many of these additional protections [in the bill] wouldn't be needed if education was available and the public guardian was fully funded

EFFECT OF AMENDMENT:

-2 Replaces the measure. Directs the director of public defense services to contract with the designated advocacy system (pursuant to ORS 192.517 (1)) to provide legal services to respondents and protected persons in protective proceedings and to provide education services to courts and visitors regarding the rights of respondents and protected persons to court-appointed counsel in protective proceedings. Provides contract specifications. Requires contract to be approved by the Public Defense Services Commission. Requires the Judicial Department to consult with the designated advocacy system for its reporting to the judiciary on county-level data concerning protective proceedings in specified counties. Adds to the reporting requirements data on persons with disabilities. Provides notice requirements for the filing of a petition for a respondent who is a protected person with a disability. Expands the circumstances that require the court to appoint counsel for a protected person. Limits measure to hearings in Multnomah, Lane and Columbia counties. Declares an emergency, effective on passage.

BACKGROUND:

This summary has not been adopted or officially endorsed by action of the committee.

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Senate Bill 528 -2 directs the director of public defense services to contract with the designated advocacy system (which is currently Disability Rights Oregon) to provide legal services to respondents and protected persons in protective proceedings and to provide education services to courts and visitors regarding the rights of respondents and protected persons to court-appointed counsel in protective proceedings.