

## SB 528 A STAFF MEASURE SUMMARY

### Senate Committee On Judiciary

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**Action Date:** 04/03/23

**Action:** Do pass with amendments. Refer to Ways and Means by prior reference. (Printed A-Eng.)

**Vote:** 3-2-0-0

**Yeas:** 3 - Gelser Blouin, Manning Jr, Prozanski

**Nays:** 2 - Linthicum, Thatcher

**Fiscal:** Fiscal impact issued

**Revenue:** No revenue impact

**Prepared By:** Amie Fender-Sosa, LPRO Analyst

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

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#### WHAT THE MEASURE DOES:

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, and includes hearings in other counties after January 1, 2024. Declares an emergency, effective on July 1, 2023.

#### ISSUES DISCUSSED:

- Senate Bill 578 (2021) relating to due process rights of respondents in guardianship petitions
- Office of Public Defense Services (OPDS) implemented a pilot program
- OPDS has been partnering with Disability Rights Oregon (DRO) to provide these services; measure would allow OPDS to contract with DRO to administer the program as well
- 75 dollars per hour is not worth the time it takes to apply for
- Measure should focus on getting attorneys to rural areas
- Types of data the Oregon Judicial Department can collect from pleadings
- Concerns about lack of specificity and definitions

#### EFFECT OF AMENDMENT:

Replaces the measure.

#### 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.

Senate Bill 578 (2021) created 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

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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 are at state expense through the Office of Public Defense Services. The measure also set up a reporting requirement that included 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.

Senate Bill 528 A 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. Declares an emergency, effective on July 1, 2023.