

A-Engrossed
Senate Bill 528

Ordered by the Senate April 19
Including Senate Amendments dated April 19

Sponsored by Senator DEMBROW (Pre-session 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.

Modifies provisions relating to protective proceedings.
Declares emergency, effective July 1, 2023.

A BILL FOR AN ACT

1
2 Relating to protective proceedings; creating new provisions; amending ORS 125.005, 125.035, 125.060,
3 125.065, 125.070, 125.075, 125.080, 125.082 and 125.150 and section 4, chapter 400, Oregon Laws
4 2021; and declaring an emergency.

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

6 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 125.**

7 **SECTION 2. (1) The public defense services executive director shall contract with the**
8 **designated advocacy system to provide legal services to respondents and protected persons**
9 **in protective proceedings and to provide education services to courts and visitors regarding**
10 **the rights of respondents and protected persons to court-appointed counsel in protective**
11 **proceedings.**

12 **(2) The contract described in this section must, at a minimum:**

13 **(a) Provide for at least three qualified attorneys to provide court-appointed counsel ser-**
14 **vices to respondents and protected persons in protective proceedings.**

15 **(b) Require the designated advocacy system to establish professional qualifications for**
16 **court-appointed counsel who provide services in protective proceedings, subject to approval**
17 **by the public defense services executive director.**

18 **(c) Require the designated advocacy system to provide training to visitors and courts**
19 **regarding the right to court-appointed counsel for respondents and protected persons in**
20 **protective proceedings.**

21 **(d) Require the designated advocacy system to develop a form of notice, written in plain**
22 **language, regarding the right to court-appointed counsel for respondents and protected per-**
23 **sons in protective proceedings to court-appointed counsel and instructions for respondents**
24 **and protected persons to access court-appointed counsel services.**

25 **(3) A contract under this section is not binding or enforceable until the contract has been**
26 **reviewed and approved by the Public Defense Services Commission as provided in ORS**
27 **151.216.**

28 **SECTION 3. ORS 125.005 is amended to read:**

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.

1 125.005. As used in this chapter:

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

4 (2) **"Designated advocacy system" means the system designated under ORS 192.517 (1) to**
5 **protect and advocate for the rights of individuals with disabilities.**

6 [(2)] (3) "Fiduciary" means a guardian or conservator appointed under the provisions of this
7 chapter or any other person appointed by a court to assume duties with respect to a protected
8 person under the provisions of this chapter.

9 [(3)] (4) "Financially incapable" means a condition in which a person is unable to manage fi-
10 nancial resources of the person effectively for reasons including, but not limited to, mental illness,
11 mental retardation, physical illness or disability, chronic use of drugs or controlled substances,
12 chronic intoxication, confinement, detention by a foreign power or disappearance. "Manage financial
13 resources" means those actions necessary to obtain, administer and dispose of real and personal
14 property, intangible property, business property, benefits and income.

15 [(4)] (5) "Guardian" means a person appointed as a guardian under the provisions of this chap-
16 ter.

17 [(5)] (6) "Incapacitated" means a condition in which a person's ability to receive and evaluate
18 information effectively or to communicate decisions is impaired to such an extent that the person
19 presently lacks the capacity to meet the essential requirements for the person's physical health or
20 safety. "Meeting the essential requirements for physical health and safety" means those actions
21 necessary to provide the health care, food, shelter, clothing, personal hygiene and other care with-
22 out which serious physical injury or illness is likely to occur.

23 [(6)] (7) "Minor" means any person who has not attained 18 years of age.

24 [(7)] (8) "Protected person" means a person for whom a protective order has been entered.

25 [(8)] (9) "Protective order" means an order of a court appointing a fiduciary or any other order
26 of the court entered for the purpose of protecting the person or estate of a respondent or protected
27 person.

28 [(9)] (10) "Protective proceeding" means a proceeding under this chapter.

29 [(10)] (11) "Respondent" means a person for whom entry of a protective order is sought in a
30 petition filed under ORS 125.055.

31 [(11)] (12) "Visitor" means a person appointed by the court under ORS 125.150 for the purpose
32 of interviewing and evaluating a respondent or protected person.

33 [(12)] (13) "Vulnerable youth" means a person who:

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

35 (b) Is eligible for classification under 8 U.S.C. 1101(a)(27)(J); and

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

38 **SECTION 4.** ORS 125.035 is amended to read:

39 125.035. (1) As used in this section:

40 (a) "Case subtype" means guardianship, conservatorship or guardianship and conservatorship.

41 (b) "Case type" means adult protective proceeding or minor protective proceeding.

42 (2) No later than September 15 of each year, the Judicial Department, **in consultation with the**
43 **designated advocacy system**, shall submit, to the interim committees of the Legislative Assembly
44 related to the judiciary, a report on county-level data concerning protective proceedings in
45 Multnomah, Lane and Columbia Counties during the two calendar years immediately preceding the

1 year of the report, including:

2 (a) The number of protective proceedings initiated, broken out by case type and case subtype;

3 (b) The number of protective proceedings where the respondent was 65 years of age or older at
4 the time the petition was filed;

5 (c) **The number of protective proceedings where the respondent was a person with a de-**
6 **velopmental or intellectual disability;**

7 (d) **The number of protective proceedings where the respondent was a person with a**
8 **physical disability and was under 65 years of age at the time the petition was filed;**

9 (e) **The number of protective proceedings where the respondent was a person with a**
10 **mental illness;**

11 [(c)] (f) The number of protective proceedings granted, broken out by case type and case sub-
12 type; and

13 [(d)] (g) The number of respondents or protected persons for whom the court appointed counsel
14 under ORS 125.080, broken out by case subtype.

15 (3) The department, in consultation with the [*office of public defense services*] **designated advo-**
16 **cacy system**, shall also include in the report described in subsection (2) of this section, to the ex-
17 tent the data is available:

18 (a) The number of cases with court-appointed counsel where payment for court-appointed coun-
19 sel was from the assets of the respondent or protected person, broken out by case subtype; and

20 (b) The aggregate number of hours court-appointed counsel spent representing respondents or
21 protected persons and the average number of hours court-appointed counsel spent per case.

22 **SECTION 5.** ORS 125.060 is amended to read:

23 125.060. (1) The notices required by this section must be given to all persons whose identities
24 and addresses can be ascertained in the exercise of reasonable diligence by the person required to
25 give the notice.

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

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

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

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

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

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

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

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

44 (h) If the respondent is receiving moneys paid or payable by the United States through the De-
45 partment of Veterans Affairs, a representative of the United States Department of Veterans Affairs

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

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

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

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

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

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

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

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

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

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

21 (d) If the protected person is receiving moneys paid or payable by the United States through the
22 Department of Veterans Affairs, a representative of the United States Department of Veterans Af-
23 fairs regional office that has responsibility for the payments to the protected person.

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

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

30 (g) Any other person that the court requires.

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

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

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

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

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

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

5 (c) If the respondent is a resident of a mental health treatment facility or a residential facility
6 for individuals with developmental disabilities, or if the person nominated to act as fiduciary intends
7 to place the respondent in such a facility, the [system described in ORS 192.517 (1)] **designated**
8 **advocacy system.**

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

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

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

18 (c) If the protected person is a resident of a mental health treatment facility or a residential
19 facility for individuals with developmental disabilities, or if the motion seeks authority to place the
20 protected person in such a facility, the [system described in ORS 192.517 (1)] **designated advocacy**
21 **system.**

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

23 (10) The requirement that notice be served on an attorney for a respondent or protected person
24 under subsection (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney
25 receiving the notice to represent the respondent or protected person in the protective proceeding.

26 **SECTION 6.** ORS 125.065 is amended to read:

27 125.065. (1) Except as provided in ORS 125.060, notice of the filing of a petition must be per-
28 sonally served on any respondent who has attained 14 years of age. Notice of a petition must be
29 personally served on the parents of a respondent if the petition is based on the fact that the re-
30 spondent is a minor. The notice may not be served on the respondent by the visitor appointed by
31 the court. The notice shall be written in language reasonably understandable by the respondent. The
32 notice must be printed in type size equal to at least 12-point type.

33 **(2) When notice is required to be provided under ORS 125.060, 125.075 or 125.082 to a re-**
34 **spondent or protected person who is a person with a disability, the notice must be in plain**
35 **language and in a format that ensures accessibility to the respondent or protected person,**
36 **taking into consideration the means of communication that is most effective with the spe-**
37 **specific respondent or protected person.**

38 **(3) Whenever notice is required under ORS 125.060, 125.075 or 125.082 to be given to the**
39 **designated advocacy system:**

40 **(a) If the person giving notice is represented by counsel, the person shall provide the**
41 **notice electronically in a manner described by the system; or**

42 **(b) If the person giving notice is not represented by counsel, the person shall provide the**
43 **notice by mail or electronically in a manner described by the system.**

44 [(2)] (4) Except as provided in subsection (1) of this section, the notices required under ORS
45 125.060 may be mailed to the last-known address of the person. If the address or identity of any

1 person is not known and cannot be ascertained with reasonable diligence, notice of the filing of a
2 petition may be given by publishing at least once a week for three consecutive weeks a copy of the
3 notice in a newspaper having general circulation in the county where the hearing is to be held. The
4 last publication of the notice must be at least 15 days before the final date for the filing of ob-
5 jections.

6 [(3)] (5) The date of personal service or mailing under this section must be at least 15 days be-
7 fore the final date for the filing of objections to the petition or motion. If the proceedings are subject
8 to the Uniform Child Custody Jurisdiction and Enforcement Act provided for in ORS 109.701 to
9 109.834, the date of service or mailing must be at least 21 days before the final date for the filing
10 of objections to the petition or motion.

11 [(4)] (6) The court for good cause shown may provide for a different method or time of giving
12 notice under this section.

13 [(5)] (7) Proof of the giving of notice must be filed in the proceeding before the court enters any
14 order on a petition or motion.

15 **SECTION 7.** ORS 125.070 is amended to read:

16 125.070. (1) The notice required by ORS 125.060 must contain the following:

17 (a) The name, address and telephone number of the petitioner or the person making the motion,
18 and the relationship of the petitioner or person making the motion to the respondent.

19 (b) A copy of the petition or motion.

20 (c) A statement on where objections may be made or filed and the deadline for making or filing
21 those objections.

22 (d) If a hearing has been set, the date, time and place of the hearing.

23 **(e) The notice and instructions described in section 1 (2)(d) of this 2023 Act regarding**
24 **access to court-appointed counsel.**

25 (2) In addition to the requirements of subsection (1) of this section, a notice of a petition for the
26 appointment of a conservator for a respondent who is alleged to be financially incapable or a notice
27 of a petition for the appointment of a guardian or conservator for a respondent who is a minor that
28 is served on the respondent must contain the following:

29 (a) An explanation of the purpose and possible consequences of the petition.

30 (b) A statement that financial resources of the respondent may be used to pay court-approved
31 expenditures of the proceeding.

32 (c) Information regarding any free or low-cost legal services and other relevant services avail-
33 able in the area.

34 (d) Information on any appointment of a visitor and the role of the visitor.

35 (e) A statement of the rights of the respondent as follows:

36 (A) The right to be represented by an attorney.

37 (B) The right to file a written or oral objection.

38 (C) The right to request a hearing.

39 (D) The right to present evidence and cross-examine witnesses at any hearing.

40 (E) The right to request at any time that the power of the fiduciary be limited by the court.

41 (F) The right to request at any time the removal of the fiduciary or a modification of the pro-
42 tective order.

43 (3) In addition to the requirements of subsection (1) of this section, a notice of a petition for the
44 appointment of a guardian for a respondent who is alleged to be incapacitated must contain a notice,
45 printed in 14-point type, in substantially the following form:

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NOTICE TO RESPONDENT

To: Respondent _____:

_____, Petitioner, who is your _____ (relationship to respondent), or that is an agency or business that provides guardianship services, has asked a judge for the power to make decisions for you. The judge has been asked to give this person, agency or business the authority to make the following decisions for you (mark the appropriate spaces):

- ___ Medical and health care decisions, including decisions on which doctors you will see and what medications and treatments you will receive.
- ___ Residential decisions, including decisions on whether you can stay where you are currently living or be moved to another place.
- ___ Financial decisions, including decisions on paying your bills and decisions about how your money is spent.
- ___ Other decisions: _____

YOUR MONEY MAY BE USED IF THE JUDGE APPOINTS A GUARDIAN FOR YOU. YOU MAY BE ASKED TO PAY FOR THE TIME AND EXPENSES OF THE GUARDIAN, THE TIME AND EXPENSES OF THE PETITIONER'S ATTORNEY, THE TIME AND EXPENSES OF YOUR ATTORNEY, FILING FEES AND OTHER COSTS.

YOU MUST TELL SOMEONE AT THE COURTHOUSE BEFORE _____ (DATE) IF YOU OPPOSE HAVING SOMEONE ELSE MAKE THESE DECISIONS FOR YOU.

OBJECTIONS:

You can write to the judge if you do not want someone else making decisions for you. The judge's address is: _____.

You have the right to object to the appointment of a guardian by saying you want to continue to make your own decisions. If you do not want another person, agency or business making decisions for you, you can object. If you do not want _____ (Proposed Guardian) to make these decisions for you, you can object. If you do not want your money to be used to pay for these expenses, you can object.

You can object any time after the judge has appointed a guardian. You can ask the judge at any time to limit the kinds of decisions that the guardian makes for you so that you can make more decisions for yourself. You can also ask the judge at any time to end the guardianship.

THE HEARING:

The judge will hold a hearing if you do not want a guardian, do not want this particular person to act as your guardian or do not want your money used this way. At the hearing, the judge will listen to what you and others have to say about whether you need someone else to make decisions for you, who that person should be and whether your money should be spent on these things. You can have your witnesses tell the judge why you do not need a guardian and you can bring in records and other information about why you think that you do not need a guardian. You can ask your witnesses questions and other witnesses questions.

1 THE COURT VISITOR:

2 The judge will appoint someone to investigate whether you need a guardian to make decisions
3 for you. This person is called a "visitor." The visitor works for the judge and does not work for the
4 person who filed the petition asking the judge to appoint a guardian for you, for you or for any other
5 party. The visitor will come and talk to you about the guardianship process, about whether you
6 think that you need a guardian and about who you would want to be your guardian if the judge
7 decides that you need a guardian. The visitor will talk to other people who have information about
8 whether you need a guardian. The visitor will make a report to the judge about whether what the
9 petition says is true, whether the visitor thinks that you need a guardian, whether the person pro-
10 posed as your guardian is able and willing to be your guardian, who would be the best guardian for
11 you and what decisions the guardian should make for you. If there is a hearing about whether to
12 appoint a guardian for you, the visitor will be in court to testify.

13 You can tell the visitor if you don't want someone else making decisions for you when the vis-
14 itor comes to talk with you about this matter.

15
16 [LEGAL SERVICES:]

17 [You can call a lawyer if you don't want someone else making decisions for you. If you don't have
18 a lawyer, you can ask the judge whether a lawyer can be appointed for you.]

19 [There may be free or low-cost legal services or other relevant services in your local area that may
20 be helpful to you in the guardianship proceeding. For information about these services, you can call the
21 following telephone numbers _____ and ask to talk to people who can help you find legal
22 services or other types of services.]

23
24 OBJECTION FORM:

25 You can mark the blue sheet (Respondent's Objection) that is attached to this form if you do
26 not want someone else to make your decisions for you. You can give the blue sheet to the visitor
27 when the visitor comes to talk with you about this, you can show it to your attorney or you can
28 mail it to the judge.

29 _____
30
31 (4) In addition to the requirements of subsection (1) of this section, a notice of a petition that
32 is served on a respondent who is alleged to be incapacitated must contain an objection form, printed
33 on blue paper in 14-point type, in substantially the following form:

34 _____

35
36 IN THE _____ COURT

37 OF THE STATE OF OREGON

38 FOR THE COUNTY OF _____

39) Case No. _____

40 (Case Title))

41) RESPONDENT'S

42) OBJECTION

43)

44)

45)

1 I object to the petition for the following reasons:

2 — I do not want anyone else making any of my decisions for me.

3 — I do not want _____ making any decisions for me.

4 — I do not want _____ to make the following decisions for me:

5 _____
6 _____

8 _____
9 (Signature of Respondent)

10 _____
11 (Date)

12 GIVE TO THE VISITOR OR MAIL TO:
13 _____
14 _____

15
16 (5) In addition to the requirements of subsection (1) of this section, a notice of a petition pro-
17 vided to a person other than the respondent must contain a statement as follows:
18 _____

19
20 NOTICE: If you wish to receive copies of future filings in this case, you must inform the judge
21 and the person named as petitioner in this notice. You must inform the judge by filing a request for
22 notice and paying any applicable fee. The request for notice must be in writing, must clearly indi-
23 cate that you wish to receive future filings in the proceedings and must contain your name, address
24 and phone number. You must notify the person named as petitioner by mailing a copy of the request
25 to the petitioner. Unless you take these steps, you will receive no further copies of the filings in
26 the case.
27 _____

28
29 **SECTION 8.** ORS 125.075 is amended to read:

30 125.075. (1) Any person who is interested in the affairs or welfare of a respondent or protected
31 person may present objections to a petition or to a motion in a protective proceeding, including but
32 not limited to:

- 33 (a) Any person entitled to receive notice under ORS 125.060.
- 34 (b) Any stepparent or stepchild of the respondent or protected person.
- 35 (c) Any other person the court may allow.

36 (2) Objections to a petition may be either written or oral. Objections to a motion must be in
37 writing, except that a protected person may object orally in person or by other means that are in-
38 tended to convey the protected person’s objections to the court. Objections to a petition or to a
39 motion must be made or filed with the court within 15 days after notice of the petition or motion
40 is served or mailed in the manner prescribed by ORS 125.065. The court shall designate the manner
41 in which oral objections may be made that ensures that a protected person will have the protected
42 person’s objection presented to the court. The clerk of the court shall provide a means of reducing
43 the oral objections to a signed writing for the purpose of filing the objection.

44 (3) If objections are presented by any of the persons listed in subsection (1) of this section, the
45 court shall schedule a hearing on the objections. The petitioner or person making the motion shall

1 give notice to all persons entitled to notice under ORS 125.060 (3) of the date, time and place of the
2 scheduled hearing at least 15 days before the date set for hearing. Notice shall be given in the
3 manner prescribed by ORS 125.065.

4 (4) Notwithstanding ORS [21.170] **21.175**, the court may not charge or collect any fee for the
5 filing of objections under the provisions of this section or for the filing of any motion from any of
6 the following:

7 (a) The respondent or the protected person;

8 (b) The office of the Long Term Care Ombudsman; or

9 (c) The [system described in ORS 192.517 (1)] **designated advocacy system**.

10 (5) The court for good cause shown may provide for a different method or time of giving notice
11 under subsection (3) of this section.

12 **SECTION 9.** ORS 125.080 is amended to read:

13 125.080. (1) The court may require that a hearing be held on any petition or motion in a pro-
14 tective proceeding.

15 (2) A hearing must be held on a petition or motion if the respondent or protected person makes
16 or files an objection to the petition or motion and the objection is not withdrawn before the time
17 scheduled for the hearing.

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

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

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

22 (a) May allow the respondent or protected person, proposed guardian, guardian or any other
23 witness to appear by telephone, video or other remote technology;

24 (b)(A) May take testimony from or confer with the respondent or protected person and may ex-
25 clude from the conference others if the court finds that doing so would be in the best interests of
26 the respondent or protected person; and

27 (B) Notwithstanding subparagraph (A) of this paragraph, shall permit any attorney for the re-
28 spondent or protected person to attend the conference and the conference must be reported;

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

31 (d) May not inquire about any prior immigration status of the respondent or protected person
32 or about the manner or place in which the respondent or protected person entered the United States
33 of America.

34 (6)(a) If the court requires that a hearing be held or a hearing is otherwise required under this
35 section, the court shall appoint counsel for the respondent or protected person when:

36 (A) The respondent or protected person requests that counsel be appointed;

37 (B) An objection is made or filed to the petition or motion by any person;

38 (C) The court has appointed a visitor under ORS 125.150, 125.160 or 125.605, and the visitor re-
39 commends appointment of counsel for the respondent or protected person; [or]

40 **(D) The court has appointed a visitor under ORS 125.150, 125.160 or 125.605, the visitor**
41 **recommends a fiduciary be appointed and the respondent or protected person has expressed**
42 **any concern about the appointment of a fiduciary during the visitor's visit;**

43 [(D)] **(E) The court determines that the respondent or protected person [is in need of] needs**
44 **legal counsel[.];**

45 **(F) The respondent or protected person is a resident of a mental health treatment facility**

1 **or a residential facility for individuals with developmental disabilities;**

2 **(G) The guardian or the person nominated to act as guardian intends to place the re-**
3 **spondent or protected person in a facility described in subparagraph (F) of this paragraph;**
4 **or**

5 **(H) The respondent or protected person is under 65 years of age and is a person with a**
6 **disability.**

7 (b) The court is not required to appoint counsel under this subsection if the respondent or pro-
8 tected person is already represented by counsel or otherwise objects to appointment of counsel.

9 (7) If the court appoints counsel under subsection (6) of this section:

10 (a) The court shall order payment of attorney fees and costs from the guardianship or conser-
11 vatorship estate of the respondent or protected person if sufficient funds exist to pay all or a portion
12 of the attorney fees and costs due; or

13 (b) The court may determine that a respondent or protected person is financially eligible for
14 appointed counsel at state expense and, if so, the compensation for legal counsel and costs and ex-
15 penses necessary for representation of the respondent or protected person shall be determined and
16 paid by the public defense services executive director as provided under ORS 135.055.

17 **SECTION 10.** ORS 125.082 is amended to read:

18 125.082. (1)(a) Upon appointment, a guardian shall deliver written notice of the order of ap-
19 pointment to the persons described in ORS 125.060 (3).

20 (b)(A) The notice provided to the protected person under this subsection must be delivered in
21 person in a manner reasonably calculated to be understood by the protected person.

22 (B) When delivering the notice to the protected person under this subsection, the guardian shall
23 offer to also provide the notice to the protected person orally. If the protected person requests oral
24 notice in response to the offer or otherwise, the guardian shall provide oral notice.

25 (C) In providing notice to the protected person under this paragraph, the guardian shall provide
26 reasonable accommodations for effective communication as necessary.

27 (c) Notwithstanding paragraph (b) of this subsection, if the guardian determines that personal
28 delivery of the notice to the protected person is unduly burdensome, the guardian may deliver the
29 notice by first class mail and certified, registered or express mail, return receipt requested.

30 (2) A notice under this section must include:

31 (a) The title of the court in which the protective proceeding is pending and the clerk's file
32 number;

33 (b) The name and address of the protected person and the attorney for the protected person, if
34 any;

35 (c) The name and address of the guardian and the attorney for the guardian, if any;

36 (d) The date of the appointment of the guardian;

37 (e) A statement describing the authority awarded to the guardian and any limitations placed on
38 the guardian's authority;

39 (f) A statement advising the protected person or other interested person of the right of the
40 protected person to seek removal of the guardian or termination of the guardianship; and

41 (g) If the notice is delivered to the protected person as provided in subsection (1)(c) of this
42 section, a statement describing why personal delivery of the notice was unduly burdensome.

43 (3) No later than 30 days following the date of the guardian's appointment, the guardian shall
44 file in the proceeding before the court proof of the giving of notice under this section, including:

45 (a) The date, time and place where written notice was provided;

1 (b) A description of the manner the notice was provided, whether notice was provided orally and
2 whether any reasonable accommodation was provided;

3 (c) If the guardian delivered notice as provided in subsection (1)(c) of this section, a brief de-
4 scription of why personal delivery of the notice was unduly burdensome together with return of re-
5 ceipt of the mailing; and

6 (d) If the protected person is a resident of a mental health treatment facility or a residential
7 facility for individuals with developmental disabilities, or if the guardian intends to place the pro-
8 tected person in such a facility, the guardian shall provide notice under this section to the [*system*
9 *described in ORS 192.517 (1)*] **designated advocacy system:**

10 (A) If the guardian is represented by counsel, electronically in a manner described by the sys-
11 tem; or

12 (B) If the guardian is not represented by counsel, by mail or electronically in a manner de-
13 scribed by the system.

14 **SECTION 11.** ORS 125.150 is amended to read:

15 125.150. (1)(a) The court shall appoint a visitor upon the filing of a petition in a protective
16 proceeding that seeks the appointment of:

17 (A) A guardian for an adult respondent;

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

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

23 (b) Notwithstanding paragraph (a) of this subsection, if a petition in a protective proceeding
24 seeks the appointment of a guardian for a respondent because the respondent is, or, if the respond-
25 ent is a minor, will be a vulnerable youth, the court in its discretion may appoint a visitor.

26 (c) The court may appoint a visitor in any other protective proceeding or in a proceeding under
27 ORS 109.329.

28 (2) A visitor may be an officer, employee or special appointee of the court. The person appointed
29 may not have any personal interest in the proceedings. The person appointed must have training or
30 expertise adequate to allow the person to appropriately evaluate the functional capacity and needs
31 of a respondent or protected person, or each petitioner and the person to be adopted under ORS
32 109.329. The court shall provide a copy of the petition and other filings in the proceedings that may
33 be of assistance to the visitor.

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

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

43 (5) If requested by a visitor under subsection (4) of this section, a physician, naturopathic phy-
44 sician or psychologist who has examined the respondent or protected person, or each petitioner
45 under ORS 109.329, may, with patient authorization or, in the case of a minor respondent, with the

1 authorization of the minor's parent or the person having custody of the minor, or in response to a
2 court order in accordance with ORCP 44 or a subpoena under ORCP 55, provide any relevant in-
3 formation the physician, naturopathic physician or psychologist has regarding the respondent or
4 protected person, or each petitioner under ORS 109.329.

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

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

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

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

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

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

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

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

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

24 (a) The appointment of a fiduciary; and

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

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

30 (10) A visitor shall determine whether the respondent or protected person, or each petitioner
31 or the person to be adopted under ORS 109.329, wishes to be represented by counsel and, if so,
32 whether the respondent or protected person, or each petitioner or the person to be adopted under
33 ORS 109.329, has retained counsel [*and, if not, the name of an attorney the respondent or protected*
34 *person, or each petitioner or the person to be adopted under ORS 109.329, wishes to retain*].

35 **(11) The visitor shall provide the respondent or protected person with the notice and in-**
36 **formation described in section 2 (2)(d) of this 2023 Act regarding the right of the respondent**
37 **or protected person to court-appointed counsel and instructions for accessing court-**
38 **appointed counsel services.**

39 [(11)] (12) If the respondent or protected person, or each petitioner or the person to be adopted
40 under ORS 109.329, has not retained counsel, a visitor shall determine whether the respondent or
41 protected person, or each petitioner or the person to be adopted under ORS 109.329, desires the
42 court to appoint counsel.

43 [(12)] (13) If the respondent or protected person, or each petitioner or the person to be adopted
44 under ORS 109.329, does not plan to retain counsel and has not requested the appointment of
45 counsel by the court, a visitor shall determine whether the appointment of counsel would help to

1 resolve the matter and whether appointment of counsel is necessary to protect the interests of the
2 respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329.

3 **SECTION 12.** Section 4, chapter 400, Oregon Laws 2021, is amended to read:

4 **Sec. 4. (1)** The amendments to ORS 125.080 by section 1 [*of this 2021 Act*], **chapter 400, Oregon**
5 **Laws 2021**, apply only to:

6 [(1)] **(a)** Hearings taking place in Multnomah County and Lane County on or after January 2,
7 2022; **and**

8 [(2)] **(b)** Hearings taking place in Columbia County on or after January 2, 2023[; *and*].

9 **(2) The amendments to ORS 125.080 by section 9 of this 2023 Act apply only to hearings**
10 **taking place in Multnomah County, Lane County and Columbia County on or after the ef-**
11 **fective date of this 2023 Act.**

12 **(3) The amendments to ORS 125.080 by section 1, chapter 400, Oregon Laws 2021, and**
13 **section 9 of this 2023 Act apply to** hearings taking place in any other county on or after [*January*
14 *2, 2024*] **January 1, 2024.**

15 **SECTION 13.** This 2023 Act being necessary for the immediate preservation of the public
16 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
17 **July 1, 2023.**

18 _____