

Submitter: Jennifer Smith
On Behalf Of:
Committee: Senate Committee On Judiciary
Measure: SB528

I am an attorney who works in the area of protective proceedings. I have a lot of concerns about the proposed changes to Chapter 125. The changes greatly increase the requirements for establishing a protective proceeding and will increase costs for families. Often, families have a difficult time affording the cost to establish a protective proceeding in the first place. The requirements of this bill will significantly increase that cost, without providing significant additional benefit for protected persons.

For example, the bill requires the guardian to specifically say whether they will exercise authority over where the protected person resides and requires the guardian to prove why they should have that authority; however, the current statute already requires the guardian to provide notice of a planned change in the protected person's residence and does not allow a conservator to sell a primary residence without prior court approval.

Additionally, the requirement that the need for the protective proceeding to be proven every five years is incredibly burdensome. Currently, I typically withdraw from representation of a client after the guardianship is established in order to lower costs for the family. I would no longer make this my standard practice with the proposed changes. Families will have a difficult time representing themselves under these circumstances. If legal aid were more readily available for protective proceedings, some of these concerns would be relieved, but that is not currently the case.

The requirement that the protective person be given a copy of the guardian's report and be allowed to contribute to the report sounds good in theory, but is not very practical. I have established protective proceedings for individuals who are nonverbal, unconscious, or unable to read or understand such documents. Many of the protected persons I work with cannot contribute to the guardian's report in any meaningful way. The proposed changes do not allow for any exceptions in these circumstances. It is pointless to impose such a requirement without exception, when the whole purpose for a guardianship is that the protected person is incapacitated.

Finally, the changes refer to supported decision making several times throughout. However, Oregon does not have any legal framework in place for supported decision making. I would be in favor of a supported decision making law similar to that implemented in Washington. Without a legal process allowing someone to appoint a supportive decision maker, many health facilities and other institutions will not speak to the support person.