

Requested by Senator DEMBROW

**PROPOSED AMENDMENTS TO
SENATE BILL 528**

1 On page 1 of the printed bill, line 2, after the second semicolon delete the
2 rest of the line and delete lines 3 through 5 and insert “amending ORS
3 125.005, 125.035, 125.060, 125.065, 125.070, 125.075, 125.080, 125.082 and 125.150
4 and section 4, chapter 400, Oregon Laws 2021; and declaring an
5 emergency.”.

6 Delete lines 7 through 32 and delete pages 2 through 29 and insert:

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

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

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

16 **“(a) Provide for at least three qualified attorneys to provide court-**
17 **appointed counsel services to respondents and protected persons in**
18 **protective proceedings.**

19 **“(b) Require the designated advocacy system to establish profes-**
20 **sional qualifications for court-appointed counsel who provide services**
21 **in protective proceedings, subject to approval by the public defense**

1 **services executive director.**

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

5 **“(d) Require the designated advocacy system to develop a form of**
6 **notice, written in plain language, regarding the right to court-**
7 **appointed counsel for respondents and protected persons in protective**
8 **proceedings to court-appointed counsel and instructions for respond-**
9 **ents and protected persons to access court-appointed counsel services.**

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

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

14 **“125.005. As used in this chapter:**

15 **“(1) ‘Conservator’ means a person appointed as a conservator under the**
16 **provisions of this chapter.**

17 **“(2) ‘Designated advocacy system’ means the system designated**
18 **under ORS 192.517 (1) to protect and advocate for the rights of indi-**
19 **viduals with disabilities.**

20 **“[(2)] (3) ‘Fiduciary’ means a guardian or conservator appointed under the**
21 **provisions of this chapter or any other person appointed by a court to as-**
22 **sume duties with respect to a protected person under the provisions of this**
23 **chapter.**

24 **“[(3)] (4) ‘Financially incapable’ means a condition in which a person is**
25 **unable to manage financial resources of the person effectively for reasons**
26 **including, but not limited to, mental illness, mental retardation, physical**
27 **illness or disability, chronic use of drugs or controlled substances, chronic**
28 **intoxication, confinement, detention by a foreign power or disappearance.**
29 **‘Manage financial resources’ means those actions necessary to obtain, ad-**
30 **minister and dispose of real and personal property, intangible property,**

1 business property, benefits and income.

2 “[4] (5) ‘Guardian’ means a person appointed as a guardian under the
3 provisions of this chapter.

4 “[5] (6) ‘Incapacitated’ means a condition in which a person’s ability to
5 receive and evaluate information effectively or to communicate decisions is
6 impaired to such an extent that the person presently lacks the capacity to
7 meet the essential requirements for the person’s physical health or safety.
8 ‘Meeting the essential requirements for physical health and safety’ means
9 those actions necessary to provide the health care, food, shelter, clothing,
10 personal hygiene and other care without which serious physical injury or
11 illness is likely to occur.

12 “[6] (7) ‘Minor’ means any person who has not attained 18 years of age.

13 “[7] (8) ‘Protected person’ means a person for whom a protective order
14 has been entered.

15 “[8] (9) ‘Protective order’ means an order of a court appointing a
16 fiduciary or any other order of the court entered for the purpose of protect-
17 ing the person or estate of a respondent or protected person.

18 “[9] (10) ‘Protective proceeding’ means a proceeding under this chapter.

19 “[10] (11) ‘Respondent’ means a person for whom entry of a protective
20 order is sought in a petition filed under ORS 125.055.

21 “[11] (12) ‘Visitor’ means a person appointed by the court under ORS
22 125.150 for the purpose of interviewing and evaluating a respondent or pro-
23 tected person.

24 “[12] (13) ‘Vulnerable youth’ means a person who:

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

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

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

29 **“SECTION 4.** ORS 125.035 is amended to read:

30 “125.035. (1) As used in this section:

1 “(a) ‘Case subtype’ means guardianship, conservatorship or guardianship
2 and conservatorship.

3 “(b) ‘Case type’ means adult protective proceeding or minor protective
4 proceeding.

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

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

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

15 “(c) **The number of protective proceedings where the respondent**
16 **was a person with a developmental or intellectual disability;**

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

20 “(e) **The number of protective proceedings where the respondent**
21 **was a person with a mental illness;**

22 “[c] (f) The number of protective proceedings granted, broken out by
23 case type and case subtype; and

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

26 “(3) The department, in consultation with the [*office of public defense*
27 *services*] **designated advocacy system**, shall also include in the report de-
28 scribed in subsection (2) of this section, to the extent the data is available:

29 “(a) The number of cases with court-appointed counsel where payment for
30 court-appointed counsel was from the assets of the respondent or protected

1 person, broken out by case subtype; and

2 “(b) The aggregate number of hours court-appointed counsel spent repre-
3 senting respondents or protected persons and the average number of hours
4 court-appointed counsel spent per case.

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

6 “125.060. (1) The notices required by this section must be given to all
7 persons whose identities and addresses can be ascertained in the exercise of
8 reasonable diligence by the person required to give the notice.

9 “(2) Notice of the filing of a petition for the appointment of a fiduciary
10 or entry of other protective order must be given by the petitioner to the
11 following persons:

12 “(a) The respondent, if the respondent has attained 14 years of age unless
13 the petition is for the appointment of a guardian for a vulnerable youth who
14 has attained 18 years of age and the respondent’s declaration consenting to
15 the appointment has been filed with the court.

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

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

19 “(d) Any person who is cohabiting with the respondent and who is inter-
20 ested in the affairs or welfare of the respondent.

21 “(e) Any person who has been nominated as fiduciary or appointed to act
22 as fiduciary for the respondent by a court of any state, any trustee for a
23 trust established by or for the respondent, any person appointed as a health
24 care representative under the provisions of ORS 127.505 to 127.660 and any
25 person acting as attorney-in-fact for the respondent under a power of attor-
26 ney.

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

30 “(g) If the respondent is a minor and has no living parents, any person

1 nominated to act as fiduciary for the minor in a will or other written in-
2 strument prepared by a parent of the minor.

3 “(h) If the respondent is receiving moneys paid or payable by the United
4 States through the Department of Veterans Affairs, a representative of the
5 United States Department of Veterans Affairs regional office that has re-
6 sponsibility for the payments to the protected person.

7 “(i) If the respondent is receiving moneys paid or payable for public as-
8 sistance provided under ORS chapter 411 by the State of Oregon through the
9 Department of Human Services, a representative of the department.

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

13 “(k) If the respondent is committed to the legal and physical custody of
14 the Department of Corrections, the Attorney General and the superintendent
15 or other officer in charge of the facility in which the respondent is confined.

16 “(L) If the respondent is a foreign national, the consulate for the
17 respondent’s country.

18 “(m) Any other person that the court requires.

19 “(3) Notice of a motion for the termination of the protective proceedings,
20 for removal of a fiduciary, for modification of the powers or authority of a
21 fiduciary, for approval of a fiduciary’s actions or for protective orders in
22 addition to those sought in the petition must be given by the person making
23 the motion to the following persons:

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

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

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

29 “(d) If the protected person is receiving moneys paid or payable by the
30 United States through the Department of Veterans Affairs, a representative

1 of the United States Department of Veterans Affairs regional office that has
2 responsibility for the payments to the protected person.

3 “(e) If the protected person is committed to the legal and physical custody
4 of the Department of Corrections, the Attorney General and the superinten-
5 dent or other officer in charge of the facility in which the protected person
6 is confined.

7 “(f) If the protected person is a vulnerable youth, the consulate of the
8 vulnerable youth’s country of nationality or, if unknown, the consulate of
9 the vulnerable youth’s last country of residence prior to the United States
10 of America.

11 “(g) Any other person that the court requires.

12 “(4) A request for notice under subsection (3)(b) of this section must be
13 in writing and include the name, address and phone number of the person
14 requesting notice. A copy of the request must be mailed by the person mak-
15 ing the request to the petitioner or to the fiduciary if a fiduciary has been
16 appointed. The original request must be filed with the court. The person fil-
17 ing the request must pay the fee specified by ORS 21.135.

18 “(5) A person who files a request for notice in the proceedings in the
19 manner provided by subsection (4) of this section is entitled to receive notice
20 from the fiduciary of any motion specified in subsection (3) of this section
21 and of any other matter to which a person listed in subsection (2) of this
22 section is entitled to receive notice under a specific provision of this chapter.

23 “(6) If the Department of Human Services is nominated as guardian for
24 the purpose of consenting to the adoption of a minor, the notice provided for
25 in this section must also be given to the minor’s brothers, sisters, aunts,
26 uncles and grandparents.

27 “(7) In addition to the requirements of subsection (2) of this section, no-
28 tice of the filing of a petition for the appointment of a guardian for a person
29 who is alleged to be incapacitated must be given by the petitioner to the
30 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 fa-
3 cility, or if the person nominated to act as fiduciary intends to place the
4 respondent in a nursing home or residential facility, the office of the Long
5 Term Care Ombudsman.

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

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

16 “(a) Any attorney who represented the protected person at any time dur-
17 ing the protective proceeding.

18 “(b) If the protected person is a resident of a nursing home or residential
19 facility, or if the motion seeks authority to place the protected person in a
20 nursing home or residential facility, the office of the Long Term Care Om-
21 budsman.

22 “(c) If the protected person is a resident of a mental health treatment
23 facility or a residential facility for individuals with developmental disabili-
24 ties, or if the motion seeks authority to place the protected person in such
25 a facility, the [*system described in ORS 192.517 (1)*] **designated advocacy
26 system.**

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

29 “(10) The requirement that notice be served on an attorney for a re-
30 spondent or protected person under subsection (7)(a) or (8)(a) of this section

1 does not impose any responsibility on the attorney receiving the notice to
2 represent the respondent or protected person in the protective proceeding.

3 **“SECTION 6.** ORS 125.065 is amended to read:

4 “125.065. (1) Except as provided in ORS 125.060, notice of the filing of a
5 petition must be personally served on any respondent who has attained 14
6 years of age. Notice of a petition must be personally served on the parents
7 of a respondent if the petition is based on the fact that the respondent is a
8 minor. The notice may not be served on the respondent by the visitor ap-
9 pointed by the court. The notice shall be written in language reasonably
10 understandable by the respondent. The notice must be printed in type size
11 equal to at least 12-point type.

12 **“(2) When notice is required to be provided under ORS 125.060,**
13 **125.075 or 125.082 to a respondent or protected person who is a person**
14 **with a disability, the notice must be in plain language and in a format**
15 **that ensures accessibility to the respondent or protected person, tak-**
16 **ing into consideration the means of communication that is most ef-**
17 **fective with the specific respondent or protected person.**

18 **“(3) Whenever notice is required under ORS 125.060, 125.075 or**
19 **125.082 to be given to the designated advocacy system:**

20 **“(a) If the person giving notice is represented by counsel, the per-**
21 **son shall provide the notice electronically in a manner described by**
22 **the system; or**

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

26 “[2)] (4) Except as provided in subsection (1) of this section, the notices
27 required under ORS 125.060 may be mailed to the last-known address of the
28 person. If the address or identity of any person is not known and cannot be
29 ascertained with reasonable diligence, notice of the filing of a petition may
30 be given by publishing at least once a week for three consecutive weeks a

1 copy of the notice in a newspaper having general circulation in the county
2 where the hearing is to be held. The last publication of the notice must be
3 at least 15 days before the final date for the filing of objections.

4 “[3] (5) The date of personal service or mailing under this section must
5 be at least 15 days before the final date for the filing of objections to the
6 petition or motion. If the proceedings are subject to the Uniform Child
7 Custody Jurisdiction and Enforcement Act provided for in ORS 109.701 to
8 109.834, the date of service or mailing must be at least 21 days before the
9 final date for the filing of objections to the petition or motion.

10 “[4] (6) The court for good cause shown may provide for a different
11 method or time of giving notice under this section.

12 “[5] (7) Proof of the giving of notice must be filed in the proceeding
13 before the court enters any order on a petition or motion.

14 **“SECTION 7.** ORS 125.070 is amended to read:

15 “125.070. (1) The notice required by ORS 125.060 must contain the fol-
16 lowing:

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

20 “(b) A copy of the petition or motion.

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

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

24 **“(e) The notice and instructions described in section 1 (2)(d) of this
25 2023 Act regarding access to court-appointed counsel.**

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

1 “(a) An explanation of the purpose and possible consequences of the pe-
2 tition.

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

5 “(c) Information regarding any free or low-cost legal services and other
6 relevant services available in the area.

7 “(d) Information on any appointment of a visitor and the role of the vis-
8 itor.

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

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

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

12 “(C) The right to request a hearing.

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

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

17 “(F) The right to request at any time the removal of the fiduciary or a
18 modification of the protective order.

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

23 “ _____

24 NOTICE TO RESPONDENT

25

26 To: Respondent _____:

27

28 _____, Petitioner, who is your _____ (relationship
29 to respondent), or that is an agency or business that provides guardianship
30 services, has asked a judge for the power to make decisions for you. The

1 judge has been asked to give this person, agency or business the authority
2 to make the following decisions for you (mark the appropriate spaces):

3 — Medical and health care decisions, including decisions on which doc-
4 tors you will see and what medications and treatments you will re-
5 ceive.

6 — Residential decisions, including decisions on whether you can stay
7 where you are currently living or be moved to another place.

8 — Financial decisions, including decisions on paying your bills and de-
9 cisions about how your money is spent.

10 — Other decisions: _____
11 _____.

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

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

20

21 **OBJECTIONS:**

22 You can write to the judge if you do not want someone else making de-
23 cisions for you. The judge's address is: _____.

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

30 You can object any time after the judge has appointed a guardian. You

1 can ask the judge at any time to limit the kinds of decisions that the
2 guardian makes for you so that you can make more decisions for yourself.
3 You can also ask the judge at any time to end the guardianship.

4

5 THE HEARING:

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

15

16 THE COURT VISITOR:

17 The judge will appoint someone to investigate whether you need a
18 guardian to make decisions for you. This person is called a “visitor.” The
19 visitor works for the judge and does not work for the person who filed the
20 petition asking the judge to appoint a guardian for you, for you or for any
21 other party. The visitor will come and talk to you about the guardianship
22 process, about whether you think that you need a guardian and about who
23 you would want to be your guardian if the judge decides that you need a
24 guardian. The visitor will talk to other people who have information about
25 whether you need a guardian. The visitor will make a report to the judge
26 about whether what the petition says is true, whether the visitor thinks that
27 you need a guardian, whether the person proposed as your guardian is able
28 and willing to be your guardian, who would be the best guardian for you and
29 what decisions the guardian should make for you. If there is a hearing about
30 whether to appoint a guardian for you, the visitor will be in court to testify.

1 You can tell the visitor if you don't want someone else making decisions
2 for you when the visitor comes to talk with you about this matter.

3

4 *[LEGAL SERVICES:]*

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

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

13

14 **OBJECTION FORM:**

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

20 “ _____

21 “(4) In addition to the requirements of subsection (1) of this section, a
22 notice of a petition that is served on a respondent who is alleged to be in-
23 capacitated must contain an objection form, printed on blue paper in 14-point
24 type, in substantially the following form:

25 “ _____

26 IN THE _____ COURT
27 OF THE STATE OF OREGON
28 FOR THE COUNTY OF _____
29) Case No. _____
30 (Case Title))

1) RESPONDENT'S
2) OBJECTION
3)
4)
5)
6

7 I object to the petition for the following reasons:

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

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

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

11 _____
12 _____

13

14

(Signature of Respondent)

15

16

(Date)

17

18

GIVE TO THE VISITOR OR MAIL TO:

19

“ _____

20

21 “(5) In addition to the requirements of subsection (1) of this section, a
22 notice of a petition provided to a person other than the respondent must
23 contain a statement as follows:

24

25 NOTICE: If you wish to receive copies of future filings in this case, you
26 must inform the judge and the person named as petitioner in this notice. You
27 must inform the judge by filing a request for notice and paying any appli-
28 cable fee. The request for notice must be in writing, must clearly indicate
29 that you wish to receive future filings in the proceedings and must contain
30 your name, address and phone number. You must notify the person named

1 as petitioner by mailing a copy of the request to the petitioner. Unless you
2 take these steps, you will receive no further copies of the filings in the case.

3 “

4 **“SECTION 8.** ORS 125.075 is amended to read:

5 “125.075. (1) Any person who is interested in the affairs or welfare of a
6 respondent or protected person may present objections to a petition or to a
7 motion in a protective proceeding, including but not limited to:

8 “(a) Any person entitled to receive notice under ORS 125.060.

9 “(b) Any stepparent or stepchild of the respondent or protected person.

10 “(c) Any other person the court may allow.

11 “(2) Objections to a petition may be either written or oral. Objections
12 to a motion must be in writing, except that a protected person may object
13 orally in person or by other means that are intended to convey the protected
14 person’s objections to the court. Objections to a petition or to a motion
15 must be made or filed with the court within 15 days after notice of the pe-
16 tition or motion is served or mailed in the manner prescribed by ORS 125.065.
17 The court shall designate the manner in which oral objections may be made
18 that ensures that a protected person will have the protected person’s ob-
19 jection presented to the court. The clerk of the court shall provide a means
20 of reducing the oral objections to a signed writing for the purpose of filing
21 the objection.

22 “(3) If objections are presented by any of the persons listed in subsection
23 (1) of this section, the court shall schedule a hearing on the objections. The
24 petitioner or person making the motion shall give notice to all persons en-
25 titled to notice under ORS 125.060 (3) of the date, time and place of the
26 scheduled hearing at least 15 days before the date set for hearing. Notice
27 shall be given in the manner prescribed by ORS 125.065.

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

- 1 “(a) The respondent or the protected person;
2 “(b) The office of the Long Term Care Ombudsman; or
3 “(c) The [*system described in ORS 192.517 (1)*] **designated advocacy**
4 **system.**

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

7 “**SECTION 9.** ORS 125.080 is amended to read:

8 “125.080. (1) The court may require that a hearing be held on any petition
9 or motion in a protective proceeding.

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

13 “(3) A hearing must be held on a motion to modify a guardian’s powers
14 under ORS 125.323.

15 “(4) The respondent or protected person may appear at a hearing in per-
16 son or by counsel.

17 “(5) If the hearing is regarding a petition for appointment of a guardian
18 for a vulnerable youth or a petition involving a vulnerable youth
19 guardianship, the court:

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

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

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

30 “(c) May not inquire into the nationality or current immigration status

1 of the proposed guardian, guardian or any other witness; and

2 “(d) May not inquire about any prior immigration status of the respond-
3 ent or protected person or about the manner or place in which the respond-
4 ent or protected person entered the United States of America.

5 “(6)(a) If the court requires that a hearing be held or a hearing is other-
6 wise required under this section, the court shall appoint counsel for the re-
7 spondent or protected person when:

8 “(A) The respondent or protected person requests that counsel be ap-
9 pointed;

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

11 “(C) The court has appointed a visitor under ORS 125.150, 125.160 or
12 125.605, and the visitor recommends appointment of counsel for the respond-
13 ent or protected person; [*or*]

14 “**(D) The court has appointed a visitor under ORS 125.150, 125.160**
15 **or 125.605, the visitor recommends a fiduciary be appointed and the**
16 **respondent or protected person has expressed any concern about the**
17 **appointment of a fiduciary during the visitor’s visit;**

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

20 “**(F) The respondent or protected person is a resident of a mental**
21 **health treatment facility or a residential facility for individuals with**
22 **developmental disabilities;**

23 “**(G) The guardian or the person nominated to act as guardian in-**
24 **tends to place the respondent or protected person in a facility de-**
25 **scribed in subparagraph (F) of this paragraph; or**

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

28 “(b) The court is not required to appoint counsel under this subsection
29 if the respondent or protected person is already represented by counsel or
30 otherwise objects to appointment of counsel.

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

2 “(a) The court shall order payment of attorney fees and costs from the
3 guardianship or conservatorship estate of the respondent or protected person
4 if sufficient funds exist to pay all or a portion of the attorney fees and costs
5 due; or

6 “(b) The court may determine that a respondent or protected person is
7 financially eligible for appointed counsel at state expense and, if so, the
8 compensation for legal counsel and costs and expenses necessary for repre-
9 sentation of the respondent or protected person shall be determined and paid
10 by the public defense services executive director as provided under ORS
11 135.055.

12 **“SECTION 10.** ORS 125.082 is amended to read:

13 “125.082. (1)(a) Upon appointment, a guardian shall deliver written notice
14 of the order of appointment to the persons described in ORS 125.060 (3).

15 “(b)(A) The notice provided to the protected person under this subsection
16 must be delivered in person in a manner reasonably calculated to be under-
17 stood by the protected person.

18 “(B) When delivering the notice to the protected person under this sub-
19 section, the guardian shall offer to also provide the notice to the protected
20 person orally. If the protected person requests oral notice in response to the
21 offer or otherwise, the guardian shall provide oral notice.

22 “(C) In providing notice to the protected person under this paragraph, the
23 guardian shall provide reasonable accommodations for effective communi-
24 cation as necessary.

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

29 “(2) A notice under this section must include:

30 “(a) The title of the court in which the protective proceeding is pending

1 and the clerk’s file number;

2 “(b) The name and address of the protected person and the attorney for
3 the protected person, if any;

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

6 “(d) The date of the appointment of the guardian;

7 “(e) A statement describing the authority awarded to the guardian and
8 any limitations placed on the guardian’s authority;

9 “(f) A statement advising the protected person or other interested person
10 of the right of the protected person to seek removal of the guardian or ter-
11 mination of the guardianship; and

12 “(g) If the notice is delivered to the protected person as provided in sub-
13 section (1)(c) of this section, a statement describing why personal delivery
14 of the notice was unduly burdensome.

15 “(3) No later than 30 days following the date of the guardian’s appoint-
16 ment, the guardian shall file in the proceeding before the court proof of the
17 giving of notice under this section, including:

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

19 “(b) A description of the manner the notice was provided, whether notice
20 was provided orally and whether any reasonable accommodation was pro-
21 vided;

22 “(c) If the guardian delivered notice as provided in subsection (1)(c) of
23 this section, a brief description of why personal delivery of the notice was
24 unduly burdensome together with return of receipt of the mailing; and

25 “(d) If the protected person is a resident of a mental health treatment
26 facility or a residential facility for individuals with developmental disabili-
27 ties, or if the guardian intends to place the protected person in such a fa-
28 cility, the guardian shall provide notice under this section to the [*system*
29 *described in ORS 192.517 (1)*] **designated advocacy system**:

30 “(A) If the guardian is represented by counsel, electronically in a manner

1 described by the system; or

2 “(B) If the guardian is not represented by counsel, by mail or electron-
3 ically in a manner described by the system.

4 **“SECTION 11.** ORS 125.150 is amended to read:

5 “125.150. (1)(a) The court shall appoint a visitor upon the filing of a pe-
6 tition in a protective proceeding that seeks the appointment of:

7 “(A) A guardian for an adult respondent;

8 “(B) A guardian for a minor respondent who is more than 16 years of age,
9 in cases where the court determines there is the likelihood that a petition
10 seeking appointment of a guardian for the respondent as an adult will be
11 filed before the date that the respondent attains majority, in accordance with
12 ORS 125.055 (6)(a), or as an adult; or

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

15 “(b) Notwithstanding paragraph (a) of this subsection, if a petition in a
16 protective proceeding seeks the appointment of a guardian for a respondent
17 because the respondent is, or, if the respondent is a minor, will be a vul-
18 nerable youth, the court in its discretion may appoint a visitor.

19 “(c) The court may appoint a visitor in any other protective proceeding
20 or in a proceeding under ORS 109.329.

21 “(2) A visitor may be an officer, employee or special appointee of the
22 court. The person appointed may not have any personal interest in the pro-
23 ceedings. The person appointed must have training or expertise adequate to
24 allow the person to appropriately evaluate the functional capacity and needs
25 of a respondent or protected person, or each petitioner and the person to be
26 adopted under ORS 109.329. The court shall provide a copy of the petition
27 and other filings in the proceedings that may be of assistance to the visitor.

28 “(3) A visitor appointed by the court under this section shall interview
29 a person nominated or appointed as fiduciary and the respondent or pro-
30 tected person, or each petitioner and the person to be adopted under ORS

1 109.329, personally at the place where the respondent or protected person,
2 or each petitioner or the person to be adopted under ORS 109.329, is located.

3 “(4) Subject to any law relating to confidentiality, the visitor may inter-
4 view any physician, naturopathic physician or psychologist who has exam-
5 ined the respondent or protected person, or each petitioner under ORS
6 109.329, the person or officer of the institution having the care, custody or
7 control of the respondent or protected person, or each petitioner under ORS
8 109.329, and any other person who may have relevant information.

9 “(5) If requested by a visitor under subsection (4) of this section, a phy-
10 sician, naturopathic physician or psychologist who has examined the re-
11 spondent or protected person, or each petitioner under ORS 109.329, may,
12 with patient authorization or, in the case of a minor respondent, with the
13 authorization of the minor’s parent or the person having custody of the mi-
14 nor, or in response to a court order in accordance with ORCP 44 or a
15 subpoena under ORCP 55, provide any relevant information the physician,
16 naturopathic physician or psychologist has regarding the respondent or pro-
17 tected person, or each petitioner under ORS 109.329.

18 “(6) A visitor shall determine whether it appears that the respondent or
19 protected person, or each petitioner or the person to be adopted under ORS
20 109.329, is able to attend the hearing and, if able to attend, whether the re-
21 spondent or protected person, or each petitioner or the person to be adopted
22 under ORS 109.329, is willing to attend the hearing.

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

25 “(a) The inability of the respondent to provide for the needs of the re-
26 spondent with respect to physical health, food, clothing and shelter;

27 “(b) The location of the respondent’s residence and the ability of the re-
28 spondent to live in the residence while under guardianship;

29 “(c) Alternatives to guardianship considered by the petitioner and reasons
30 why those alternatives are not available;

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

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

6 “(f) Whether the respondent’s inability to provide for the needs of the
7 respondent is an isolated incident of negligence or improvidence, or whether
8 a pattern exists.

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

11 “(a) The appointment of a fiduciary; and

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

13 “(9) If a petition is filed seeking the appointment of a conservator in ad-
14 dition to the appointment of a guardian, a visitor shall investigate whether
15 the respondent is financially incapable. The visitor shall interview the per-
16 son nominated to act as conservator and shall interview the respondent
17 personally at the place where the respondent is located.

18 “(10) A visitor shall determine whether the respondent or protected per-
19 son, or each petitioner or the person to be adopted under ORS 109.329, wishes
20 to be represented by counsel and, if so, whether the respondent or protected
21 person, or each petitioner or the person to be adopted under ORS 109.329,
22 has retained counsel [*and, if not, the name of an attorney the respondent or*
23 *protected person, or each petitioner or the person to be adopted under ORS*
24 *109.329, wishes to retain*].

25 “(11) **The visitor shall provide the respondent or protected person**
26 **with the notice and information described in section 2 (2)(d) of this**
27 **2023 Act regarding the right of the respondent or protected person to**
28 **court-appointed counsel and instructions for accessing court-appointed**
29 **counsel services.**

30 “[~~11~~] (12) If the respondent or protected person, or each petitioner or the

1 person to be adopted under ORS 109.329, has not retained counsel, a visitor
2 shall determine whether the respondent or protected person, or each
3 petitioner or the person to be adopted under ORS 109.329, desires the court
4 to appoint counsel.

5 “[~~(12)~~] **(13)** If the respondent or protected person, or each petitioner or the
6 person to be adopted under ORS 109.329, does not plan to retain counsel and
7 has not requested the appointment of counsel by the court, a visitor shall
8 determine whether the appointment of counsel would help to resolve the
9 matter and whether appointment of counsel is necessary to protect the in-
10 terests of the respondent or protected person, or each petitioner or the per-
11 son to be adopted under ORS 109.329.

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

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

16 “[~~(1)~~] **(a)** Hearings taking place in Multnomah County and Lane County
17 on or after January 2, 2022; **and**

18 “[~~(2)~~] **(b)** Hearings taking place in Columbia County on or after January
19 2, 2023[; *and*].

20 **“(2) The amendments to ORS 125.080 by section 9 of this 2023 Act**
21 **apply only to hearings taking place in Multnomah County, Lane**
22 **County and Columbia County on or after the effective date of this 2023**
23 **Act.**

24 **“(3) The amendments to ORS 125.080 by section 1, chapter 400,**
25 **Oregon Laws 2021, and section 9 of this 2023 Act apply to hearings tak-**
26 **ing place in any other county on or after [*January 2, 2024*] **January 1,****
27 **2024.**

28 **“SECTION 13. This 2023 Act being necessary for the immediate**
29 **preservation of the public peace, health and safety, an emergency is**
30 **declared to exist, and this 2023 Act takes effect July 1, 2023.”.**

