



Oregon Judicial Department  
Office of the State Court Administrator

September 15, 2024

**SB 578 REPORT TO THE INTERIM COMMITTEES  
OF THE LEGISLATIVE ASSEMBLY RELATED TO  
THE JUDICIARY**

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## EXECUTIVE SUMMARY

The 2021 Legislative Assembly passed Senate Bill (SB) 578, which established a pilot program in three counties to provide state-paid counsel to persons subject to protective proceedings (cases seeking appointment of a guardian or conservator) in specified circumstances. The bill directed the Oregon Judicial Department (OJD) to report annually with certain information about those cases and appointments, starting September 15, 2024.

The reporting requirement is codified at ORS 125.035 and directs OJD to report county-level data on protective proceedings in Lane and Multnomah counties beginning in 2022, and adding Columbia County in 2023. The pilot program was expanded to all Oregon counties starting on January 2, 2024.

Data highlights from the report include:

- Multnomah County had 801 cases filed in the two-year period, while Lane County had 228 and Columbia County had 82. Case filings in each county increased between 2022 and 2023, between 8% and 21%.
- Most cases in all three counties involved guardianship proceedings for adults, although the proportion of cases varied by year and by county.
- In the larger counties between 31% and 36% of cases involved a respondent 65 years or older, while in Columbia County it ranged between 10% and 50% in the two-year period.
- Most protective proceeding petitions were granted in each county and case type, ranging from 70% in Lane County guardianships in 2023 to 97% of conservatorship petitions in Multnomah County in 2022. The rates of granting petitions in cases involving adults and minors varied.
- Courts appointed counsel in generally low rates in Multnomah County (11%) during the reporting period, but at higher rates in Lane County (53.5%) and Columbia County (20%). Attorneys were more often appointed in cases involving appointment of a guardian or appointment of a guardian and a conservator in the same case.
- Attorney-fee payments were reported in a relatively small number of protective proceeding cases. However, this data reflects payment requests made in any protective proceeding case in that year, not necessarily a request in a case filed in the same year.
- Of the cases where attorney fees were requested, most fees were paid by assets of the person's estate. Less than 10% (17 of 166) were paid by the Oregon Public Defense Commission. This data reflects attorney-fee requests in any case pending during the reporting year, regardless of when the case was filed.
- The average number of hours spent on a case in which attorneys requested fee payments ranged from 10.7 in Lane County in 2022 to 24.3 – also in Lane County, in 2023. Having more reported cases over a longer time period will help make this data more meaningful.

The Oregon Judicial Department (OJD) is pleased to submit the first Senate Bill 578 (2021) Report to the Interim Committees of the Legislative Assembly relating to the judiciary. Part of that bill directs OJD to “report on county-level data concerning protective proceedings in Multnomah, Lane, and Columbia Counties during the two calendar years immediately preceding the year of the report” and to consult with the Oregon Public Defense Commission (OPDC) and include available data regarding appointment of counsel in protective proceedings.

ORS 125.035. OJD consulted with OPDC on this report, but the data included comes solely from OJD data sources. This report summarizes the statutory changes made by SB 578 and presents the summarized protective proceeding data as required by SB 578.

## **BACKGROUND**

ORS chapter 125 gives courts authority to appoint guardians and conservators, who have substantial authority to make decisions and manage the day-to-day lives of those Oregonians who are unable to do so themselves. These protective proceedings begin with an allegation that the person named as a party in the case has limited capacity to independently manage their own health, safety, or financial circumstances, and relatedly, to fully participate in the resolution of a contested proceeding if they object to the appointment of a guardian and/or conservator.

A guardian is someone with authority granted by the court to protect and care for the health and well-being of an incapacitated person or minor child. A conservator is a fiduciary appointed by the court to protect and conserve the assets of an incapacitated person or minor child.

Appointment of a guardian or conservator presents a substantial restriction to a person’s individual rights and liberty. While there may be discernible patterns within categories of protective proceedings, each respondent and protected person<sup>1</sup> has their own unique preferences, needs, and challenges. Therefore, judges in circuit courts or county courts with probate jurisdiction are charged with scrutinizing the initiation of a protective proceeding, and the appointment of appropriate fiduciaries, as well as ongoing monitoring to make sure the protection remains necessary, and that the appointed fiduciary is properly performing their duties.

While courts have long had the authority to appoint counsel to a respondent or protected person under ORS 125.025(3)(b), the power to appoint counsel was permissive. Many courts struggled with appointing counsel, often because respondents and protected persons lacked sufficient assets to pay attorney fees. Under ORS 125.095, the funds of a person subject to a protective proceeding may be used to pay *reasonable* fees for their attorney provided the fees requested are approved by the court before payment.<sup>2</sup> Courts were tasked with finding elder-law attorneys willing to represent respondents and protected persons in complicated matters and a very low

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<sup>1</sup> “Respondent” is defined by ORS 125.005(10) to mean the person for whom entry of a protective order is sought in a petition filed under ORS 125.055. “Protected person” means the person for whom a protective order has been entered.

<sup>2</sup> See ORS 125.095 (2024).

likelihood of compensation for their time. Circuit courts struggled to consistently appoint counsel in cases that were not conservatorship matters with substantial estate assets. With the passage of SB 578, ORS 125.080 makes appointment of counsel mandatory under specific conditions, the most common of which is when an objection is filed into the case.<sup>3</sup> While the statute provides for financially eligible respondents and protected persons to have their appointed counsels' attorney fees paid by the OPDC, it does not provide direction as to where courts are to find counsel to appoint.

## **SB 578 REPORTING REQUIREMENTS**

Oregon Laws 2021, chapter 400, section 2; as amended by Oregon Laws 2023, chapter, 281 section 23 requires that, no later than September 15 of each year, the Judicial Department shall submit, to the interim committees of the Legislative Assembly related to the judiciary, a report on county-level data concerning protective proceedings in Multnomah, Lane, and Columbia Counties during the two calendar years immediately preceding the year of the report, including:

- (a) The number of protective proceedings initiated, broken out by case type and case subtype;
- (b) The number of protective proceedings where the respondent was 65 years of age or older at the time the petition was filed;
- (c) The number of protective proceedings granted, broken out by case type, and case subtype; and
- (d) The number of respondents or protected persons for whom the court appointed counsel under ORS 125.080, broken out by case subtype.

The department, in consultation with the Oregon Public Defense Commission, shall also include in the report, to the extent the data is available:

- (a) The number of cases with court-appointed counsel where payment for court-appointed counsel was from the assets of the respondent or protected person, broken out by case subtype; and
- (b) The aggregate number of hours court-appointed counsel spent representing respondents or protected persons and the average number of hours court-appointed counsel spent per case.

## **DEFINITIONS AND CONTEXT**

There are several important introductory explanations that will clarify the data presented below. Additional explanatory notes regarding specific data are also included in each data section.

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<sup>3</sup> In addition to when an objection is filed by any person, the court shall appoint counsel for the respondent or protected person when the respondent or protected person requests counsel be appointed, a court-appointed visitor recommends appointment of counsel, or when the court determines that the respondent or protected person needs counsel. ORS 125.080(6).

First, ORS 125.035(1)(a) defines “Case subtype” to mean guardianship, conservatorship, or combined guardianship and conservatorship. ORS 125.035(1)(b) defines “Case type” to mean adult protective proceedings or minor protective proceedings. Although the Odyssey case management system, which OJD uses to collect data and manage cases, includes case subtypes in addition to the three defined by statute, for purposes of this report, only the case subtypes directed by statute have been included.<sup>4</sup>

Second, SB 578 changed ORS 125.080 in phases. Starting in 2022, mandatory appointment of counsel applied only to Multnomah and Lane Counties. In 2023 Columbia County was added. SB 578 applied statewide beginning January 2024. This report contains data for 2022 and 2023, the two calendar years preceding the year of the report. Columbia County has been included for both years’ reporting, though no attorneys were appointed by the Columbia County Circuit Court in 2022.

Third, as noted above, attorney fees to be paid from the assets of the estate of the respondent or protected person must be approved by the court. It is common practice for attorneys requesting fees to substantially complete work representing a respondent or protected person before seeking fees. It is not uncommon for as much as a year to pass between appointment of counsel and that counsel filing a petition to approve their attorney fee request. As evidenced in the data for 2022 and 2023, most counsel appointed during the pilot period did *not* seek any attorney fees.

## **SB 578 DATA REPORT**

### **(a) NUMBER OF PROTECTIVE PROCEEDINGS INITIATED, BY CASE TYPE AND CASE SUBTYPE (ORS 125.035(2)(a)).**

The data in these charts represents a count of initiating petitions requesting the appointment of a fiduciary, separated by case type (adult or minor) and case subtype (guardianship, conservatorship, or both), for each county and reporting period.

#### **MULTNOMAH – 2022**

	Adult	Minor	Total
Guardianship	160	118	278
Conservatorship	27	33	60
Guardianship & Conservatorship	45	1	46
<b>Total</b>	<b>232</b>	<b>152</b>	<b>384</b>

<sup>4</sup> Additionally, case subtypes in Odyssey include “Vulnerable Youth,” where guardianship is initiated for a young adult aged 18-21 for immigration status reasons, and “Document Recording” when registration of a foreign judgment is requested. During this reporting period, no counsel was appointed in either of these other case subtypes.

**MULTNOMAH – 2023**

	Adult	Minor	Total
Guardianship	177	108	285
Conservatorship	28	48	76
Guardianship & Conservatorship	52	4	56
Total	257	160	417

**LANE – 2022**

	Adult	Minor	Total
Guardianship	44	13	57
Conservatorship	11	19	30
Guardianship & Conservatorship	13	3	16
Total	68	35	103

**LANE – 2023**

	Adult	Minor	Total
Guardianship	57	20	77
Conservatorship	18	17	35
Guardianship & Conservatorship	13	0	13
Total	88	37	125

**COLUMBIA – 2022**

	Adult	Minor	Total
Guardianship	18	9	27
Conservatorship	0	6	6
Guardianship & Conservatorship	4	0	4
Total	22	15	37

**COLUMBIA – 2023**

	Adult	Minor	Total
Guardianship	16	22	38
Conservatorship	1	3	4
Guardianship & Conservatorship	3	0	3
Total	20	25	45

**(b) NUMBER OF PROTECTIVE PROCEEDINGS WHERE THE RESPONDENT WAS 65 YEARS OF AGE OR OLDER AT THE TIME THE PETITION WAS FILED (ORS 125.035(2)(b)).**

The data in these tables represents a count of the initiating petitions in which the respondent was age 65 or older at the time the petition was filed. The parenthetical following the count shows the percentage of adult case type petitions, of the total filed, for which the respondent was age 65 or older, for each county and reporting period. Percentages are rounded to the nearest whole number.

**MULTNOMAH**

2022 83 cases (36%)  
 2023 79 cases (31%)

**LANE**

2022 21 cases (31%)  
 2023 31 cases (35%)

**COLUMBIA**

2022 11 cases (50%)  
 2023 2 cases (10%)

**(c) NUMBER OF PROTECTIVE PROCEEDINGS GRANTED, BROKEN OUT BY CASE TYPE AND CASE SUBTYPE (ORS 125.035(2)(c)).**

The data in these tables presents the number of cases in which a limited judgment was entered appointing a fiduciary, separated by case type and case subtype, for each county and reporting period. The parenthetical following the count shows the percentage of proceedings granted, of the total filed, for each county and reporting period. Percentages are rounded to the closest whole number. If no petitions of a case type or subtype were filed, “N/A” is entered.

**MULTNOMAH – 2022**

*Of 384 petitions filed, 308 (80%) were granted.*

	Adult	Minor	Total
Guardianship	135 (84%)	75 (64%)	210 (76%)
Conservatorship	25 (93%)	33 (100%)	58 (97%)
Guardianship & Conservatorship	39 (87%)	1 (100%)	40 (87%)
<b>Total</b>	<b>199 (86%)</b>	<b>109 (68%)</b>	<b>308 (80%)</b>

**MULTNOMAH – 2023***Of 417 petitions filed, 328 (79%) were granted.*

	Adult	Minor	Total
Guardianship	136 (77%)	73 (68%)	209 (73%)
Conservatorship	25 (89%)	45 (94%)	70 (92%)
Guardianship & Conservatorship	46 (88%)	3 (75%)	49 (88%)
Total	207 (81%)	121 (76%)	328 (79%)

**LANE – 2022***Of 103 petitions filed, 85 (83%) were granted.*

	Adult	Minor	Total
Guardianship	31 (70%)	13 (100%)	44 (77%)
Conservatorship	8 (73%)	19 (100%)	27 (90%)
Guardianship & Conservatorship	12 (92%)	2 (67%)	14 (88%)
Total	51 (75%)	34 (97%)	85 (83%)

**LANE – 2023***Of 123 petitions filed, 93 (76%) were granted.*

	Adult	Minor	Total
Guardianship	41 (72%)	13 (65%)	54 (70%)
Conservatorship	12 (67%)	15 (88%)	27 (77%)
Guardianship & Conservatorship	12 (92%)	N/A	12 (92%)
Total	65 (74%)	28 (76%)	93 (74%)

**COLUMBIA – 2022***Of 37 petitions filed, 32 (86%) were granted.*

	Adult	Minor	Total
Guardianship	15 (83%)	7 (78%)	22 (81%)
Conservatorship	N/A	6 (100%)	6 (100%)
Guardianship & Conservatorship	4 (100%)	N/A	4 (100%)
Total	19 (86%)	13 (87%)	32 (86%)



**COLUMBIA – 2023***Of 45 petitions filed, 40 (89%) were granted.*

	Adult	Minor	Total
Guardianship	16 (100%)	18 (82%)	34 (89%)
Conservatorship	0 (0%)	3 (100%)	3 (75%)
Guardianship & Conservatorship	3 (100%)	N/A	3 (100%)
Total	19 (95%)	21 (85%)	40 (89%)

**(d) NUMBER OF RESPONDENTS OR PROTECTED PERSONS FOR WHOM THE COURT APPOINTED COUNSEL UNDER ORS 125.080, BROKEN OUT BY CASE SUBTYPE.**

The data in the tables below show a count of cases in which the court-appointed counsel for the person subject to the protective proceeding, separated by case subtype. Unlike reporting provisions (a) – (c) above, where cases relevant to the data reported were only those filed in the respective year, appointment of counsel can occur at any time during a case’s lifespan. The lifespan of a case may be considerable, with the length of a case in 2023 averaging 90 months in the three reporting counties. The count of cases in which counsel was appointed draws from both new cases (initiating petition filed during the respective year), and cases that may have been initiated any time prior to the respective year, but which remain open during the reporting year.

Of note: The mandatory attorney appointment provisions implemented by SB 578 did not apply to Columbia County until 2023. There were no attorneys appointed by the Columbia County court in 2022 before SB 578 inclusion in 2023.

**MULTNOMAH – 2022**

Counsel Appointed in Guardianship	Counsel Appointed in Conservatorship	Counsel Appointed in Guardianship/Conservatorship	Total Counsel Appointed
26	3	13	42

**MULTNOMAH – 2023**

Counsel Appointed in Guardianship	Counsel Appointed in Conservatorship	Counsel Appointed in Guardianship/Conservatorship	Total Counsel Appointed
32	2	13	47

**LANE – 2022**

Counsel Appointed in Guardianship	Counsel Appointed in Conservatorship	Counsel Appointed in Guardianship/Conservatorship	Total Counsel Appointed
28	4	9	41

**LANE – 2023**

Counsel Appointed in Guardianship	Counsel Appointed in Conservatorship	Counsel Appointed in Guardianship/Conservatorship	Total Counsel Appointed
10	10	7	27

**COLUMBIA – 2022**

Counsel Appointed in Guardianship	Counsel Appointed in Conservatorship	Counsel Appointed in Guardianship/Conservatorship	Total Counsel Appointed
0	0	0	0

**COLUMBIA – 2023**

Counsel Appointed in Guardianship	Counsel Appointed in Conservatorship	Counsel Appointed in Guardianship/Conservatorship	Total Counsel Appointed
7	0	2	9

**FOR THE CASES IN WHICH COUNSEL WAS APPOINTED:**

- (a) NUMBER OF CASES WITH COURT-APPOINTED COUNSEL WHERE PAYMENT FOR COURT-APPOINTED COUNSEL WAS FROM THE ASSETS OF THE RESPONDENT OR PROTECTED PERSON, BROKEN OUT BY CASE SUBTYPE (ORS 125.035(3)(a)).**

The statute requires reporting only of cases where the payment of court-appointed counsel came from the assets of the respondent or protected person. The top row of each table shows the count of cases in the given reporting year where the court approved fees for counsel to be paid from the assets of the person subject to the protective proceeding, separated by case subtype.

To clarify the context of these numbers, OJD has also included additional rows to the table. The second row shows the count of cases in which the court determined appointed counsel’s fees were eligible to be paid by the OPDC Executive Director under ORS 125.080(7)(b). The third row of the tables shows the remainder of cases in which counsel was appointed for the person subject to the protective proceeding, but as of the date of this report, no attorney fees had been sought or requested from appointed counsel. The total of each column in each table matches the total cases in which counsel was appointed, for each case subtype, in the reporting year (fourth row).

Of note: The mandatory attorney appointment provisions implemented by SB 578 did not apply to Columbia County until 2023. There were no attorneys appointed by the Columbia County court in 2022 before SB 578 inclusion in 2023.

**MULTNOMAH – 2022**

	Guardianship	Conservatorship	Guardianship & Conservatorship	Total (All Subtype)
Fees paid from assets of estate	1	1	7	9
Fees paid by OPDC	4	0	0	4
No fees requested by time of reporting	21	2	6	29
All cases with appointment	26	3	13	42

**MULTNOMAH – 2023**

	Guardianship (Adult & Minor)	Conservatorship (Adult & Minor)	Guardianship & Conservatorship (Adult & Minor)	Total (All Subtype)
Fees paid from assets of estate	3	0	6	9
Fees paid by OPDC	2	0	0	2
No fees requested by time of reporting	27	2	7	36
All cases with appointment	32	2	13	47

**LANE – 2022**

	Guardianship (Adult & Minor)	Conservatorship (Adult & Minor)	Guardianship & Conservatorship (Adult & Minor)	Total (All Subtype)
Fees paid from assets of estate	4	2	6	12
Fees paid by OPDC	6	0	0	6
No fees requested by time of reporting	18	2	3	23
All cases with appointment	28	4	8	41

**LANE – 2023**

	Guardianship (Adult & Minor)	Conservatorship (Adult & Minor)	Guardianship & Conservatorship (Adult & Minor)	Total (All Subtype)
Fees paid from assets of estate	1	5	5	11
Fees paid by OPDS	0	0	1	1
No fees requested by time of reporting	9	5	1	15
All cases with appointment	10	10	7	27

**COLUMBIA – 2022**

	Guardianship (Adult & Minor)	Conservatorship (Adult & Minor)	Guardianship & Conservatorship (Adult & Minor)	Total (All Subtype)
Fees paid from assets of estate	0	0	0	0
Fees paid by OPDS	0	0	0	0
No fees requested by time of reporting	0	0	0	0
All cases with appointment	0	0	0	0

**COLUMBIA – 2023**

	Guardianship (Adult & Minor)	Conservatorship (Adult & Minor)	Guardianship & Conservatorship (Adult & Minor)	Total (All Subtype)
Fees paid from assets of estate	0	0	1	1
Fees paid by OPDS	4	0	0	4
No fees requested by time of reporting	3	0	1	4
All cases with appointment	7	0	2	9

**(b) AGGREGATE NUMBER OF HOURS COURT-APPOINTED COUNSEL SPENT REPRESENTING RESPONDENTS OR PROTECTED PERSONS AND THE AVERAGE NUMBER OF HOURS COURT-APPOINTED COUNSEL SPENT PER CASE (ORS 125.035(3)(b)).**

As shown in the previous report section, a notable minority of cases with court-appointed counsel resulted in counsel seeking fees, either from the estate of the person or state funds. Data for the aggregate and average time spent in representing respondents and protected persons is only available to OJD when the court has been requested to approve appointed counsel’s fees. The charts below detail the aggregate and average attorney hours spent representing the person subject to the proceeding, but the data is only available in a subset of the total cases in which counsel was appointed. The first column of each chart shows the count of cases for which the data was available in the given reporting year, which matches the sum of the first two rows of the last column in the corresponding chart in preceding report section.

Of note: The mandatory attorney appointment provisions implemented by SB 578 did not apply to Columbia County until 2023. There were no attorneys appointed by the Columbia County court in 2022, before SB 578 applied in that county.

**MULTNOMAH – 2022**

Number of Cases with Billing	Aggregate Attorney Hours	Average Attorney Hours per Case
13	210.9	16.2

**MULTNOMAH – 2023**

Number of Cases with Billing	Aggregate Attorney Hours	Average Attorney Hours per Case
11	151.1	13.7

**LANE – 2022**

Number of Cases with Billing	Aggregate Attorney Hours	Average Attorney Hours per Case
18	193.3	10.7

**LANE – 2023**

Number of Cases with Billing	Aggregate Attorney Hours	Average Attorney Hours per Case
12	291.8	24.3

**COLUMBIA – 2022**

Number of Cases with Billing	Aggregate Attorney Hours	Average Attorney Hours per Case
0	0	0

**COLUMBIA – 2023**

Number of Cases with Billing	Aggregate Attorney Hours	Average Attorney Hours per Case
5	97.1	19.42