

In Re: House Bill, 2671 to Establish a State Office of the Public Guardian
Chair Tomei and Committee Members,

I am Elizabeth Welch, Senior Circuit Judge. I was the Chief family and Probate Judge in Portland for 12 years.

I retired six years ago and have volunteered as Co Chair of the Supreme Court Task Force on Protective Proceedings and for the past 4 years on the Public Guardian task Force of which I am the Chair..

Multnomah Co. has an Office of Public Guardian and I had the opportunity to observe their work and their service to the community. After I retired, I worked around the State as a Plan B Judge and came to recognize the profound impact of the fact that no other courts have a Public Guardian Program and thus have no way to protect many of the most vulnerable citizens of Oregon.

HB 2671 seeks the establishment of a State Office of Public Guardian to provide guardianship services to persons throughout Oregon. The proposed staff of professional fiduciaries would be subject to strict rules, to be developed by an Advisory Board. As set forth in greater detail in the Executive Summary all aspects of the proposed program will be guided by the duty to find the least restrictive alternative for potential clients. I want to be clear that the program will provide a very stringent intake process, which Holly Berman will describe to you, and will act as Guardian only after a Circuit Court Judge has found that the legal requirements for the imposition of a Guardianship have been proven.

Public Guardianship is for adults with the most acute forms of development disability, mental illness, dementia and traumatic brain injury, When such persons lack the capacity to participate in decision making about their medical and living situations, and are thereby endangered, Guardianship may be needed.

Family members or trusted friends are favored in selecting a guardian. If there is no one appropriate to fill the role,, or if family, as is often the case, are the problem, Public Guardianship is the last resort.

The people in question are either unwilling or unable to participate in planning for themselves or are too compromised to be legally capable of consenting to needed services.

These are people who are in our communities and come into regular contact with services funded by State and local governments. They represent a drain upon police, emergency services, hospitals and of course the system services currently available for seniors and the disabled.

Lacking useful data either in Oregon or nationally, we have estimated that there are between 1575 and 3175 persons in need of PG services in Oregon who are not being served,

The proposal would serve 300 to 350 persons, only 10% of the estimated demand.

Thank you for your consideration,

Elizabeth Welch, Senior Judge

Frequently Asked Questions Task Force on Public Guardian and Conservator

What is guardianship?

Guardianship is court-ordered protection for persons incapable of protecting themselves.

What does a Guardian do?

A guardian makes decisions that assure the protected person's health and safety.

When would an adult need a guardian?

When a court finds that a person is incapable of making decisions about his or her own basic health and safety needs such that serious physical injury or illness is likely to occur, a guardianship may be ordered. The basis for incapacity may stem from severe mental health conditions, developmental disabilities, and age-related conditions.

Who serves as a guardian for an adult?

Family members or close friends are the preferred option to serve as guardians. In many cases, however, there is no such person available or appropriate to serve. If the incapacitated person or their family has resources to hire a professional guardian, there are professional fiduciaries available.

What happens if there is no one to serve as guardian and no money to hire one?

At-risk adults who are unable to care for themselves, have no families or friends willing to serve as guardians, and who cannot afford professional guardians, are vulnerable to continued abuse or neglect leading to repeated hospitalizations, stroke, heart attack, malnutrition, commitment to a psychiatric unit or premature death. **A statewide "Public Guardian" is a resource that has been developed in many states to address this problem.**

Are there public guardian programs in Oregon?

Since 1972, there has been a Public Guardian Program in Multnomah County. Around the state, there are a few non-profit agencies that can serve as guardian but they have very limited capacity and cannot meet the need for guardian and conservator services.

What would a statewide Office of Public Guardian do?

A small professional staff would provide guardianship services throughout Oregon to individuals in the most acute situations.



December 2012

Membership:

Judge Elizabeth Welch
Chair

Sen. Chris Edwards
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Jeffrey Brandon
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Staff:

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Joint Interim Task Force on Public Guardian and Conservator (HB 2237) Report

Adopted: December 18, 2012

EXECUTIVE SUMMARY

Oregon has a significant and largely unaddressed health and human rights crisis. Due to the lack of public guardianship services throughout most of the state, adults who are incapable of making decisions about their personal and financial affairs have no one to make decisions on their behalf, to advocate for their interests, to provide services, and to protect their rights. These adults are at continuing and significant risk of harm and their numbers are likely to increase in coming years.

Guardianship is a relationship created by state law in which a court authorizes a person or entity to make decisions for another person who has been found to be unable to make those decisions for him or herself to the extent that serious injury or illness is likely to occur. Conservatorship is a similar legal relationship that gives a person or entity the power to make financial decisions for another who is incapacitated and unable to make financial decisions for him or herself. As used in this report, "guardianship" includes both personal and financial decision-making and refers only to adults. Guardianship of persons under 18 years of age is not the topic of this report.

For some high-risk, low-income persons, there is no one to serve as a guardian and no money to hire a professional fiduciary. Family members or friends are not available, either because they do not exist, or are not appropriate to be guardian or conservator. These vulnerable people are falling through Oregon's safety net. They fall victim to the self-interest of others and may be unnecessarily placed in institutions. For examples of public guardianship cases, please see Appendix B.

House Bill 2237 (2011) established the Joint Interim Task Force on Public Guardian and Conservator (Task Force) to complete the work of the 2009 Public Guardian and Conservator Task Force (House Bill 2883). The Task Force is charged with studying and making recommendations on the need for public guardian and conservator services in the state, specifically for those unable to afford such services. To achieve that end, the Task Force must develop options and models for programs, show the need and assess the cost of such programs, suggest pilot programs, if appropriate, and develop model standards of practice.

The Task Force strongly recommends the establishment of an independent statewide agency to provide guardianship services by passage of House Bill 2671.

The Task Force also supports future legislative action to provide a right to counsel for the proposed protected person and mandatory hearings in all public guardianship cases, with the necessary appropriations, as well as legislation relating to certification and training of fiduciaries.

RECOMMENDED LEGISLATION

The Task Force recommends the establishment of the State Office of the Public Guardian and Conservator (the Office) to provide direct guardian and conservator services to vulnerable adults who are without an appropriate option for guardian or conservator. To that end, the Task Force strongly recommends the Legislative Assembly pass House Bill 2671.

House Bill 2671 is the direct recommendation of the Task Force. The bill would establish a new state agency staffed by professional guardians and conservators. The State Office of the Public Guardian and Conservator is led by the Public Guardian, who is appointed by the Governor and confirmed by the Senate. The Office is responsible for assessing potential clients that are referred to the Office, petitioning for guardian and/or conservatorship over the proposed protected person, and developing an action plan for that person. The Office, once appointed, must provide guardianship and/or conservatorship services as directed by the Court in the least restrictive manner appropriate to the circumstances. The Office will have the ability to contract with attorneys, organizations, and professional fiduciaries to assist in providing guardianship services when it is infeasible or impractical for the Office to provide such services directly. Oversight of the Office will be from the Public Guardian and Conservator Advisory Committee. House Bill 2671 would not end current programs in operation, but would work in addition to current county-based and non-profit guardianship programs. Appendix A outlines the findings of the Task Force, as well as detailed recommendations for the philosophy and creation of the Office.

NEED FOR OFFICE

Appointment of a guardian or conservator for an adult most often involves individuals with serious and persistent mental health illness, intellectual and/or developmental disabilities, or seniors with dementia. Individuals may have multiple disabilities, including physical disabilities. When such individuals are incapable of making decisions and need a guardian, most have a responsible family member or friend who can serve in this capacity. But for some Oregonians, there are no available family members or friends to serve as a guardian. In many situations, the person cannot afford to pay for a private guardian. In the absence of statewide public guardianship, these individuals:

- Experience harm because of their inability to attend to their basic needs and obtain essential medical, mental health and rehabilitative treatment and services;
- Are particularly vulnerable to physical and sexual abuse and financial exploitation;
- Are often placed and remain in more intensive, restrictive and costly levels of care than is necessary; and
- Are subject to the decisions of care providers and others who, however well intentioned, have no legal authority to make decisions for another and do not always act in accord with the individual's rights, interests and welfare.

The demand for public guardian and conservator services is significant and the need for public guardian services is escalating. Factors contributing to the demand include the graying of the population, the aging of individuals with disabilities, the aging of caregivers, the advancement of medical technologies affording new choices for chronic conditions and end-of-life care, the rising incidence of abuse elders and other vulnerable adults, and the lack of means to acquire a legal surrogate.

Without a guardian, adults with disabilities or impairments are vulnerable to homelessness, untreated medical conditions, and are targets for elder abuse in all its forms. See Appendix B for examples. With a guardian, protected persons are guided to stable housing, medical care, and

protected from exploitation. Utilizing a 2011 study performed for the Washington state legislature and data from states with established public guardianship systems, the Task Force estimates that between 1,575 to 3,175 Oregonians need, but lack, public guardianship services. Further details can be found in Appendix A.

CURRENT PROGRAMS

Oregon's Public Guardianship law was enacted in 1971. Currently, the law allows counties to develop and fund public guardian programs. The first county to develop a legal guardian under that law was the Multnomah County Public Guardian and Conservator. Multnomah County's program has been the longest running program in Oregon and has served the most clients. Other counties have attempted to create Public Guardian programs, with limited success. Serious efforts occurred in Clackamas and Washington counties, but were not successful. In the past 15 years, Lane County has made three substantial efforts to get county approval for a Public Guardian, but to no avail. Jackson County started a pilot public guardian program, but transferred it to a non-profit organization that was already providing fiduciary services. House Bill 2671 will allow current programs to continue while creating a statewide program to provide services in areas where the counties have not been able to start or maintain a public guardian program.

OTHER RECOMMENDATIONS

While the Task Force has not introduced legislation to the effect, it strongly supports legislative action to require mandatory hearings and a right to counsel in all public guardianship cases, with the necessary appropriations to the Judicial Department and the Office of Public Defense Services, and supports mandatory certification and licensure of professional fiduciaries.

Oregon appears to be the only state in the nation that does not require a hearing on all guardianship petitions. Given that a guardianship is a permanent intrusion on an individual's liberty, hearings are an important safeguard against overreaching. The fact that a proceeding is not "contested" does not eliminate these basic concerns. Even in cases where no objection is filed, there is an important role for the court in safeguarding the interest of the protected person. Hearings require Petitioners to prove to the Court that the legal requisites for guardianship are present in the case, that no lesser alternative is appropriate, and that the proposed Guardian is a suitable person to have such power over the individual. In Oregon, if an individual or a family member objects to the Petition, a hearing is required. If the individual does not have the capacity to effectively register an objection, and there is no one looking out for his or her interests, there is no hearing.

Additionally, a majority of states in the US provide for appointment of counsel at public expense. Current Oregon law makes no provision for the appointment of counsel for persons unable to secure their own lawyer.

Finally, the Task Force endorses legislation that would require mandatory certification and training of professional fiduciaries in Oregon. Oregon does not require any training, certification, or oversight of persons overseeing the care or finances of another. The Task Force believes this lack of training and oversight leads to cases of abuse and fraud against vulnerable adults.

CONCLUSION

The Task Force urges the Legislative Assembly to take important and serious steps towards protecting the most vulnerable adults in Oregon. By passing House Bill 2671 and establishing a State Office of the Public Guardian and Conservator, we can begin to fill this need.