

D R A F T

SUMMARY

Directs court to appoint court visitor for minor respondent in guardianship proceeding where minor is more than 16 years of age and court determines there is likelihood that petition seeking guardianship of respondent as adult will be filed before respondent attains age of majority or as adult.

A BILL FOR AN ACT

1
2 Relating to appointment of court visitors for minor respondents in
3 guardianship proceedings; amending ORS 125.055 and 125.150.

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

5 **SECTION 1.** ORS 125.150 is amended to read:

6 125.150. (1)(a) The court shall appoint a visitor upon the filing of a peti-
7 tion in a protective proceeding that seeks the appointment of:

8 (A) A guardian for an adult respondent;

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

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

16 (b) The court may appoint a visitor in any other protective proceeding
17 or in a proceeding under ORS 109.329.

18 (2) A visitor may be an officer, employee or special appointee of the court.
19 The person appointed may not have any personal interest in the proceedings.

1 The person appointed must have training or expertise adequate to allow the
2 person to appropriately evaluate the functional capacity and needs of a re-
3 spondent or protected person, or each petitioner and the person to be adopted
4 under ORS 109.329. The court shall provide a copy of the petition and other
5 filings in the proceedings that may be of assistance to the visitor.

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

11 (4) Subject to any law relating to confidentiality, the visitor may inter-
12 view any physician or psychologist who has examined the respondent or
13 protected person, or each petitioner under ORS 109.329, the person or officer
14 of the institution having the care, custody or control of the respondent or
15 protected person, or each petitioner under ORS 109.329, and any other person
16 who may have relevant information.

17 (5) If requested by a visitor under subsection (4) of this section, a physi-
18 cian or psychologist who has examined the respondent or protected person,
19 or each petitioner under ORS 109.329, may, with patient authorization **or,**
20 **in the case of a minor respondent, with the authorization of the**
21 **minor's parent or the person having custody of the minor,** or in re-
22 sponse to a court order in accordance with ORCP 44 or a subpoena under
23 ORCP 55, provide any relevant information the physician or psychologist has
24 regarding the respondent or protected person, or each petitioner under ORS
25 109.329.

26 (6) A visitor shall determine whether it appears that the respondent or
27 protected person, or each petitioner or the person to be adopted under ORS
28 109.329, is able to attend the hearing and, if able to attend, whether the re-
29 spondent or protected person, or each petitioner or the person to be adopted
30 under ORS 109.329, is willing to attend the hearing.

31 (7) If a petition is filed seeking the appointment of a guardian for an

1 adult respondent, a visitor shall investigate the following matters:

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

4 (b) The location of the respondent's residence and the ability of the re-
5 spondent to live in the residence while under guardianship;

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

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

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

12 (f) Whether the respondent's inability to provide for the needs of the re-
13 spondent is an isolated incident of negligence or improvidence, or whether
14 a pattern exists.

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

17 (a) The appointment of a fiduciary; and

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

19 (9) If a petition is filed seeking the appointment of a conservator in ad-
20 dition to the appointment of a guardian, a visitor shall investigate whether
21 the respondent is financially incapable. The visitor shall interview the per-
22 son nominated to act as conservator and shall interview the respondent
23 personally at the place where the respondent is located.

24 (10) A visitor shall determine whether the respondent or protected person,
25 or each petitioner or the person to be adopted under ORS 109.329, wishes to
26 be represented by counsel and, if so, whether the respondent or protected
27 person, or each petitioner or the person to be adopted under ORS 109.329,
28 has retained counsel and, if not, the name of an attorney the respondent or
29 protected person, or each petitioner or the person to be adopted under ORS
30 109.329, wishes to retain.

31 (11) If the respondent or protected person, or each petitioner or the person

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

5 (12) If the respondent or protected person, or each petitioner or the person
6 to be adopted under ORS 109.329, does not plan to retain counsel and has
7 not requested the appointment of counsel by the court, a visitor shall deter-
8 mine whether the appointment of counsel would help to resolve the matter
9 and whether appointment of counsel is necessary to protect the interests of
10 the respondent or protected person, or each petitioner or the person to be
11 adopted under ORS 109.329.

12 **SECTION 2.** ORS 125.055 is amended to read:

13 125.055. (1) A petition in a protective proceeding that seeks the appoint-
14 ment of a fiduciary must designate the type of fiduciary that the petitioner
15 seeks to have appointed. If the petition does not request the appointment of
16 a fiduciary, or if the petition requests both the appointment of a fiduciary
17 and some other protective order, the petition must contain a statement of the
18 nature of the protective order requested. The caption of the petition must
19 reflect the type of fiduciary whose appointment is requested or, if the ap-
20 pointment of a fiduciary is not requested, the nature of the protective order
21 requested. An original and duplicate copy of the petition must be filed with
22 the court.

23 (2) A petition in a protective proceeding must contain the following in-
24 formation to the extent that the petitioner is aware of the information or to
25 the extent that the petitioner is able to acquire the information with rea-
26 sonable effort:

27 (a) The name, age, residence address and current location of the re-
28 spondent.

29 (b) The interest of the petitioner.

30 (c) The name, age and address of the petitioner and any person nominated
31 as fiduciary in the petition and the relationship of the nominated person to

1 the respondent.

2 (d) A statement as to whether the person nominated to be fiduciary has
3 been convicted of a crime, has filed for or received protection under the
4 bankruptcy laws or has had a license revoked or canceled that was required
5 by the laws of any state for the practice of a profession or occupation. If the
6 nominated person has been convicted of a crime, filed for or received pro-
7 tection under bankruptcy laws or had a professional or occupational license
8 revoked or canceled, the petition shall contain a statement of the circum-
9 stances surrounding those events. If the person nominated is not the
10 petitioner, the statement must indicate that the person nominated is willing
11 and able to serve.

12 (e) The name and address of any fiduciary that has been appointed for the
13 respondent by a court of any state, any trustee for a trust established by or
14 for the respondent, any person appointed as a health care representative
15 under the provisions of ORS 127.505 to 127.660 and any person acting as
16 attorney-in-fact for the respondent under a power of attorney.

17 (f) The name and address of the respondent's treating physician and any
18 other person who is providing care to the respondent.

19 (g) The factual information that supports the request for the appointment
20 of a fiduciary or entry of other protective order, and the names and addresses
21 of all persons who have information that would support a finding that an
22 adult respondent is incapacitated or financially incapable.

23 (h) A statement that indicates whether the nominated person intends to
24 place the respondent in a mental health treatment facility, a nursing home
25 or other residential facility.

26 (i) A general description of the estate of the respondent and the
27 respondent's sources of income and the amount of that income.

28 (j) A statement indicating whether the person nominated as fiduciary is
29 a public or private agency or organization that provides services to the re-
30 spondent or an employee of a public or private agency or organization that
31 provides services to the respondent.

1 (3) In addition to the requirements of subsection (2) of this section[,]:

2 (a) If a petition seeks appointment of a guardian, the petition must con-
3 tain a statement on whether the guardian will exercise any control over the
4 estate of the respondent. If the guardian will exercise any control over the
5 estate of the respondent, the petition must contain a statement of the
6 monthly income of the respondent, the sources of the respondent's income,
7 and the amount of any moneys that the guardian will be holding for the re-
8 spondent at the time of the appointment.

9 (b) If the petition seeks the appointment of a guardian for an adult re-
10 spondent, **of a guardian for a minor respondent who is more than 16**
11 **years of age, in cases where the court determines there is the likeli-**
12 **hood that a petition seeking appointment of a guardian for the re-**
13 **spondent as an adult will be filed before the date that the respondent**
14 **attains majority, in accordance with subsection (6) of this section, or**
15 **as an adult,** or of a temporary fiduciary who will exercise the powers of a
16 guardian for an adult respondent, the petition must contain a statement no-
17 tifying the court that a visitor must be appointed.

18 (4) In addition to the requirements of subsection (2) of this section, if a
19 petition seeks appointment of a conservator or a temporary fiduciary who
20 will exercise the powers of a conservator or if a petition seeks a protective
21 order relating to the estate of the respondent, the petition must contain the
22 petitioner's estimate of the value of the estate.

23 (5) A petitioner may join parties in a petition in the manner provided by
24 ORCP 28 for the joining of defendants.

25 (6) A parent or guardian of a minor may file a petition that seeks the
26 appointment of a guardian for the minor as an adult, to become effective on
27 the date that the minor attains majority, at any time within 90 days before
28 the date that the minor attains majority or at any other time determined by
29 the court to be necessary and appropriate to ensure the ongoing protection,
30 safety and welfare of the minor upon attaining majority.

31 (7) The court shall review a petition seeking appointment of a guardian

1 and shall dismiss the proceeding without prejudice, or require that the peti-
2 tion be amended, if the court determines that the petition does not meet the
3 requirements of this section.

4
