

**PRELIMINARY STAFF MEASURE SUMMARY****CARRIER:**

Senate Committee on Judiciary

**REVENUE: No revenue impact****FISCAL: May have fiscal impact, statement not yet issued****SUBSEQUENT REFERRAL TO:****Action:****Vote:****Yeas:****Nays:****Exc.:****Prepared By:** Channa Newell, Counsel**Meeting Dates:** 2/9

**WHAT THE MEASURE DOES:** Requires appointment of counsel for person subject to protective proceeding when certain circumstances exist. Requires counsel be appointed when 1) requested by person; 2) objection to petition or motion is filed by any person; 3) court appointed visitor recommends counsel be appointed; or 4) court determines person is in need of counsel. Specifies court need not appoint counsel when person is already represented by counsel or if person objects to appointment. Directs court to order payment of attorney fees and costs from estate of person if funds exist or from public defense services if person is determined to be financially eligible for counsel at state expense.

**ISSUES DISCUSSED:**

**EFFECT OF COMMITTEE AMENDMENT:** Proposed (-3) amendments removes language to make appointment necessary even when protected person or respondent objects to appointment. Makes clarifying changes.

**BACKGROUND:** Guardianship is a protective proceeding created by state law in which a court gives a person or entity the duty and power to make decisions for another. Conservatorship is a similar relationship, but is limited to financial oversight. The appointment of a guardian or conservator occurs after a petition is filed and a court finds that the person who is the subject of the proceedings lacks capacity to make decisions on his or her own behalf. Guardians are often family or friends, but may also be professionals. Appointment of a guardian may be appropriate or necessary in circumstances where an adult has significant development delays or illness, including dementia. Guardianship may be limited, but frequently removes significant decision making authority from the person and gives it to the guardian. The guardian may be making determinations on housing, daily activity, health care treatment, and finances. Under current Oregon law, a court may require a hearing be held in a guardianship proceeding, but there is no authority for a court to appoint counsel for a person who is subject to a protective proceeding.

Senate Bill 471 allows a court to appoint counsel for the person subject to a proposed guardianship or conservatorship if the person requests counsel, an objection to the petition or other motion has been filed, the court-appointed visitor recommends appointment of counsel, or if the court determines the person is in need of counsel. Payment for attorney fees and costs are to come from the estate of the person, if sufficient, or from the public defense services, as the court directs.