

Senate Bill 503

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs Judicial Department to establish uniform visitor policies. Specifies qualifications and requirements for visitors appointed in protective proceedings. Requires visitors to undergo criminal records check before appointment. Prohibits court from delegating responsibility for selection of visitor to attorneys, parties and other persons.

A BILL FOR AN ACT

1
2 Relating to visitors in protective proceedings; amending ORS 125.150, 125.160 and 125.165.

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

4 **SECTION 1.** ORS 125.165 is amended to read:

5 125.165. (1) [*A presiding judge shall by court order establish:*]

6 [*(a) Qualifications for persons serving as visitors for the court, in addition to those qualifications*
7 *established by this section; and]*

8 [*(b) standards and procedures to be used by visitors in the performance of their duties]* **The Ju-**
9 **dicial Department shall establish uniform visitor policies, including standards, protocols and**
10 **procedures to be used by visitors in the performance of their duties.**

11 **(2) A visitor must have the following qualifications in addition to the requirements set**
12 **forth in subsection (4) of this section:**

13 **(a) Be licensed and in good standing as a physician, physician assistant, psychologist,**
14 **marriage and family therapist, professional counselor, clinical social worker, registered**
15 **nurse or nurse practitioner;**

16 **(b) Have at least two years of relevant experience in the range of protective proceeding**
17 **case types that arise under this chapter, including but not limited to experience in profes-**
18 **sionally working with people with mental health conditions, intellectual disabilities, develop-**
19 **mental disabilities and geriatric concerns; and**

20 **(c) Have successfully completed a mandatory training as prescribed by the Judicial De-**
21 **partment that includes education on guardianships, conservatorships, decision-making ca-**
22 **capacity, the fundamentals of abuse and neglect of vulnerable adults and the function of**
23 **visitors for the court.**

24 [(2)] **(3)** A visitor may be an employee of the court. The visitor may not have any personal in-
25 terest in the respondent or protected person, or any pecuniary or financial interest in the
26 proceedings[, *if those interests could compromise or otherwise affect the decisions of the visitor. A*
27 *visitor may not receive compensation for services rendered as a fiduciary for two or more protected*
28 *persons at the same time who are not related to the fiduciary].*

29 [(3)] **(4)** [*A visitor must]* **The court shall oversee visitors appointed by the court and ensure**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **that the visitor meets all of the following requirements:**

2 (a) [*Have*] **Has** the training and expertise adequate to allow the person to conduct the interviews
3 and make the recommendations required under ORS 125.150 and 125.155, to communicate with, as-
4 sess and interact with respondents and protected persons[,] and to perform the other duties required
5 of a visitor; [*and*]

6 (b) [*Demonstrate*] **Demonstrates** sufficient knowledge of the law so as to be able to inform a
7 respondent or protected person of the nature and effect of a protective proceeding, to inform a re-
8 spondent or protected person of the rights of the respondent or protected person in the protective
9 proceeding, to answer the questions of a respondent or protected person and to inform fiduciaries
10 concerning their powers and duties[.];

11 (c) **Maintains any professional license or certification in good standing and immediately**
12 **notifies the court of any change in status, including investigations of the visitor by the au-**
13 **thority that issued the license or certification; and**

14 (d) **Undergoes a criminal records check as described in subsection (5) of this section and**
15 **provides the results of the criminal records check to the court before appointment by the**
16 **court.**

17 (5)(a) **Upon the request of the court, and in compliance with procedures adopted by the**
18 **Department of State Police under ORS 181A.230, the Department of State Police shall furnish**
19 **to the court such information on a prospective visitor as the Department of State Police**
20 **may have in its possession, including but not limited to manual or computerized criminal**
21 **offender information. With the approval of the Department of State Police, a local law**
22 **enforcement agency may furnish the information described in this subsection to the court.**

23 (b) **Subsequent to furnishing the information required under paragraph (a) of this sub-**
24 **section, the Department of State Police shall conduct a nationwide criminal records check**
25 **of the prospective visitor through the Federal Bureau of Investigation by use of the pro-**
26 **spective visitor's fingerprints and shall report the results to the court. In accordance with**
27 **the procedures of the Department of State Police, a local law enforcement agency may con-**
28 **duct the criminal records check described in this paragraph if the local law enforcement**
29 **agency has received approval under paragraph (a) of this subsection.**

30 (c) **The Department of State Police or local law enforcement agency may not transfer the**
31 **fingerprint card used to conduct a criminal records check under this subsection unless the**
32 **public agency or person receiving the fingerprint card agrees to destroy the fingerprint card**
33 **or to return the fingerprint card to the Department of State Police or local law enforcement**
34 **agency.**

35 (d) **If a public agency or person returns a fingerprint card to the Department of State**
36 **Police or local law enforcement agency, the Department of State Police or local law**
37 **enforcement agency shall destroy the fingerprint card or return the fingerprint card to the**
38 **prospective visitor. The Department of State Police or local law enforcement agency may not**
39 **keep a record of the fingerprints.**

40 (e) **Results of criminal records checks submitted to the court are confidential and shall**
41 **be subject to inspection only by the parties to the proceedings and their attorneys, and are**
42 **not subject to inspection by members of the public except pursuant to a court order entered**
43 **after a showing of good cause.**

44 (f) **A visitor must disclose to the court any criminal conviction of the visitor that occurs**
45 **after the criminal records check was performed.**

1 **SECTION 2.** ORS 125.150 is amended to read:

2 125.150. (1)(a) The court shall appoint a visitor upon the filing of a petition in a protective
3 proceeding that seeks the appointment of:

4 (A) A guardian **or conservator** for an adult respondent;

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

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

10 (b) The court may appoint a visitor:

11 (A) In any other protective proceeding; [or]

12 (B) In a proceeding under ORS 109.329; **or**

13 (C) **At any time during a guardianship or conservatorship proceeding under ORS 125.025**
14 **(3).**

15 **(c) The court may not delegate the responsibility for selecting a visitor to be appointed**
16 **in a protective proceeding to an attorney, a party to the proceeding or any other person**
17 **other than court staff.**

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

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

28 (4) Subject to any law relating to confidentiality, the visitor may interview any physician or
29 psychologist who has examined the respondent or protected person, or each petitioner under ORS
30 109.329, the person or officer of the institution having the care, custody or control of the respondent
31 or protected person, or each petitioner under ORS 109.329, and any other person who may have
32 relevant information.

33 (5) If requested by a visitor under subsection (4) of this section, a physician or psychologist who
34 has examined the respondent or protected person, or each petitioner under ORS 109.329, may, with
35 patient authorization or, in the case of a minor respondent, with the authorization of the minor's
36 parent or the person having custody of the minor, or in response to a court order in accordance
37 with ORCP 44 or a subpoena under ORCP 55, provide any relevant information the physician or
38 psychologist has regarding the respondent or protected person, or each petitioner under ORS
39 109.329.

40 (6) A visitor shall determine whether it appears that the respondent or protected person, or each
41 petitioner or the person to be adopted under ORS 109.329, is able to attend the hearing and, if able
42 to attend, whether the respondent or protected person, or each petitioner or the person to be
43 adopted under ORS 109.329, is willing to attend the hearing.

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

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

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

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

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

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

10 (f) Whether the respondent's inability to provide for the needs of the respondent is an isolated
 11 incident of negligence or improvidence, or whether a pattern exists.

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

14 (a) The appointment of a fiduciary; and

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

16 (9) If a petition is filed seeking the appointment of a conservator in addition to the appointment
 17 of a guardian, a visitor shall investigate whether the respondent is financially incapable. The visitor
 18 shall interview the person nominated to act as conservator and shall interview the respondent per-
 19 sonally at the place where the respondent is located.

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

25 (11) If the respondent or protected person, or each petitioner or the person to be adopted under
 26 ORS 109.329, has not retained counsel, a visitor shall determine whether the respondent or protected
 27 person, or each petitioner or the person to be adopted under ORS 109.329, desires the court to ap-
 28 point counsel.

29 (12) If the respondent or protected person, or each petitioner or the person to be adopted under
 30 ORS 109.329, does not plan to retain counsel and has not requested the appointment of counsel by
 31 the court, a visitor shall determine whether the appointment of counsel would help to resolve the
 32 matter and whether appointment of counsel is necessary to protect the interests of the respondent
 33 or protected person, or each petitioner or the person to be adopted under ORS 109.329.

34 **SECTION 3.** ORS 125.160 is amended to read:

35 125.160. (1) At any time after the appointment of a fiduciary, the court may appoint a visitor.
 36 The court may require the visitor to perform any duty the visitor could have performed if appointed
 37 at the time the fiduciary was appointed, including interviewing relevant persons, examining relevant
 38 records, reporting in writing to the court and being present at any hearing.

39 **(2) In addition to the duties specified in subsection (1) of this section, the court may ap-
 40 point a visitor to:**

41 **(a) Determine whether a protected person is no longer incapacitated and whether the
 42 protected person remains in need of a fiduciary;**

43 **(b) Assess the condition and welfare of the protected person;**

44 **(c) Evaluate the action or inaction of a fiduciary in order to determine if the fiduciary
 45 remains suitable and qualified to serve as the fiduciary of the protected person; and**

1 **(d) Determine whether a fiduciary should be removed for any reason, including that re-**
2 **moval is in the best interests of the protected person.**
3 _____