

Requested by Senator DEMBROW

**PROPOSED AMENDMENTS TO  
SENATE BILL 503**

1 On page 1 of the printed bill, delete lines 4 through 29 and delete pages  
2 2 through 5 and insert:

3 **“SECTION 1.** ORS 125.165 is amended to read:

4 “125.165. (1)(a) [*A presiding judge shall by court order establish:*]

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

7 “[*(b) Standards and procedures to be used by visitors in the performance*  
8 *of their duties*] **The Chief Justice of the Supreme Court shall adopt rules**  
9 **to establish uniform visitor policies, including standards, protocols and**  
10 **procedures to be used by visitors in the performance of their duties.**

11 **“(b) A presiding judge may by court order establish policies that do**  
12 **not conflict with rules adopted by the Chief Justice under paragraph**  
13 **(a) of this subsection to be followed by visitors in the performance of**  
14 **their duties in the court of that presiding judge, including policies re-**  
15 **garding the use of visitors approved by other presiding judges in other**  
16 **courts when a qualified visitor is otherwise unavailable.**

17 **“(2)(a) The Chief Justice of the Supreme Court shall adopt rules to**  
18 **establish qualifications for visitors appointed by the court. At a mini-**  
19 **imum, the rules must address the following:**

20 **“(A) The professional licenses or certifications that a visitor must**  
21 **possess; and**

1       **“(B) Completion of a mandatory training for visitors, as prescribed**  
2 **by the Judicial Department, that includes education on guardianships,**  
3 **conservatorships, decision-making capacity, the fundamentals of abuse**  
4 **and neglect of vulnerable adults and the function of visitors for the**  
5 **court.**

6       **“(b) A presiding judge may by court order establish qualifications**  
7 **for visitors in the court of that presiding judge that do not conflict**  
8 **with rules adopted by the Chief Justice under paragraph (a) of this**  
9 **subsection.**

10       “[(2)] **(3)** A visitor may be an employee of the court. The visitor may not  
11 have any personal interest in the respondent or protected person, or any  
12 pecuniary or financial interest in the proceedings[, *if those interests could*  
13 *compromise or otherwise affect the decisions of the visitor. A visitor may not*  
14 *receive compensation for services rendered as a fiduciary for two or more pro-*  
15 *ected persons at the same time who are not related to the fiduciary].*

16       “[(3)] **(4)** [*A visitor must*] **The court shall oversee visitors appointed**  
17 **by the court and ensure that a visitor meets all of the following re-**  
18 **quirements:**

19       “(a) [*Have*] **Has** the training and expertise adequate to allow the person  
20 to conduct the interviews and make the recommendations required under  
21 ORS 125.150 and 125.155, to communicate with, assess and interact with re-  
22 spondents and protected persons[,] and to perform the other duties required  
23 of a visitor; [*and*]

24       “(b) [*Demonstrate*] **Demonstrates** sufficient knowledge of the law so as  
25 to be able to inform a respondent or protected person of the nature and effect  
26 of a protective proceeding, to inform a respondent or protected person of the  
27 rights of the respondent or protected person in the protective proceeding, to  
28 answer the questions of a respondent or protected person and to inform  
29 fiduciaries concerning their powers and duties[.];

30       **“(c) Notifies the court of any change in status of a professional li-**

1 cense or certificate, including investigations of the visitor by the au-  
2 thority that issued the license or certification; and

3 “(d) Undergoes a criminal records check as described in subsection  
4 (5) of this section and provides the results of the criminal records  
5 check to the court before appointment by the court.

6 “(5)(a) Upon the request of the court, and in compliance with pro-  
7 cedures adopted by the Department of State Police under ORS  
8 181A.230, the Department of State Police shall furnish to the court  
9 such information on a prospective visitor as the Department of State  
10 Police may have in its possession, including but not limited to manual  
11 or computerized criminal offender information. With the approval of  
12 the Department of State Police, a local law enforcement agency may  
13 furnish the information described in this subsection to the court.

14 “(b) Subsequent to furnishing the information required under par-  
15 agraph (a) of this subsection, the Department of State Police shall  
16 conduct a nationwide criminal records check of the prospective visitor  
17 through the Federal Bureau of Investigation by use of the prospective  
18 visitor’s fingerprints and shall report the results to the court. In ac-  
19 cordance with the procedures of the Department of State Police, a lo-  
20 cal law enforcement agency may conduct the criminal records check  
21 described in this paragraph if the local law enforcement agency has  
22 received approval under paragraph (a) of this subsection.

23 “(c) The Department of State Police or local law enforcement  
24 agency may not transfer the fingerprint card used to conduct a crim-  
25 inal records check under this subsection unless the public agency or  
26 person receiving the fingerprint card agrees to destroy the fingerprint  
27 card or to return the fingerprint card to the Department of State Po-  
28 lice or local law enforcement agency.

29 “(d) If a public agency or person returns a fingerprint card to the  
30 Department of State Police or local law enforcement agency, the De-

1 **partment of State Police or local law enforcement agency shall destroy**  
2 **the fingerprint card or return the fingerprint card to the prospective**  
3 **visitor. The Department of State Police or local law enforcement**  
4 **agency may not keep a record of the fingerprints.**

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

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

12 **“SECTION 2.** ORS 125.150 is amended to read:

13 **“125.150. (1)(a) The court shall appoint a visitor upon the filing of a pe-**  
14 **tion in a protective proceeding that seeks the appointment of:**

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

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

21 **“(C) A temporary fiduciary who will exercise the powers of a guardian for**  
22 **an adult respondent.**

23 **“(b) The court may appoint a visitor:**

24 **“(A) In any other protective proceeding; [or]**

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

26 **“(C) At any time during a guardianship or conservatorship pro-**  
27 **ceeding under ORS 125.025 (3).**

28 **“(c) The petitioner may recommend a visitor from a court-approved**  
29 **list of visitors, including a visitor from a court-approved list in a dif-**  
30 **ferent court or from a statewide list of visitors maintained by the Ju-**

1 **ditional Department. The court shall consider and approve or deny a**  
2 **recommendation of a visitor made by a petitioner under this para-**  
3 **graph.**

4 “(2) A visitor may be an officer, employee or special appointee of the  
5 court. The person appointed may not have any personal interest in the pro-  
6 ceedings. The person appointed must have training or expertise adequate to  
7 allow the person to appropriately evaluate the functional capacity and needs  
8 of a respondent or protected person, or each petitioner and the person to be  
9 adopted under ORS 109.329. The court shall provide a copy of the petition  
10 and other filings in the proceedings that may be of assistance to the visitor.

11 “(3) A visitor appointed by the court under this section shall interview  
12 a person nominated or appointed as fiduciary and the respondent or pro-  
13 tected person, or each petitioner and the person to be adopted under ORS  
14 109.329, personally at the place where the respondent or protected person,  
15 or each petitioner or the person to be adopted under ORS 109.329, is located.

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

22 “(5) If requested by a visitor under subsection (4) of this section, a phy-  
23 sician or psychologist who has examined the respondent or protected person,  
24 or each petitioner under ORS 109.329, may, with patient authorization or, in  
25 the case of a minor respondent, with the authorization of the minor’s parent  
26 or the person having custody of the minor, or in response to a court order  
27 in accordance with ORCP 44 or a subpoena under ORCP 55, provide any  
28 relevant information the physician or psychologist has regarding the re-  
29 spondent or protected person, or each petitioner under ORS 109.329.

30 “(6) A visitor shall determine whether it appears that the respondent or

1 protected person, or each petitioner or the person to be adopted under ORS  
2 109.329, is able to attend the hearing and, if able to attend, whether the re-  
3 spondent or protected person, or each petitioner or the person to be adopted  
4 under ORS 109.329, is willing to attend the hearing.

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

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

9 “(b) The location of the respondent’s residence and the ability of the re-  
10 spondent to live in the residence while under guardianship;

11 “(c) Alternatives to guardianship considered by the petitioner and reasons  
12 why those alternatives are not available;

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

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

18 “(f) Whether the respondent’s inability to provide for the needs of the  
19 respondent is an isolated incident of negligence or improvidence, or whether  
20 a pattern exists.

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

23 “(a) The appointment of a fiduciary; and

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

25 “(9) If a petition is filed seeking the appointment of a conservator in ad-  
26 dition to the appointment of a guardian, a visitor shall investigate whether  
27 the respondent is financially incapable. The visitor shall interview the per-  
28 son nominated to act as conservator and shall interview the respondent  
29 personally at the place where the respondent is located.

30 “(10) A visitor shall determine whether the respondent or protected per-

1 son, or each petitioner or the person to be adopted under ORS 109.329, wishes  
2 to be represented by counsel and, if so, whether the respondent or protected  
3 person, or each petitioner or the person to be adopted under ORS 109.329,  
4 has retained counsel and, if not, the name of an attorney the respondent or  
5 protected person, or each petitioner or the person to be adopted under ORS  
6 109.329, wishes to retain.

7 “(11) If the respondent or protected person, or each petitioner or the  
8 person to be adopted under ORS 109.329, has not retained counsel, a visitor  
9 shall determine whether the respondent or protected person, or each  
10 petitioner or the person to be adopted under ORS 109.329, desires the court  
11 to appoint counsel.

12 “(12) If the respondent or protected person, or each petitioner or the  
13 person to be adopted under ORS 109.329, does not plan to retain counsel and  
14 has not requested the appointment of counsel by the court, a visitor shall  
15 determine whether the appointment of counsel would help to resolve the  
16 matter and whether appointment of counsel is necessary to protect the in-  
17 terests of the respondent or protected person, or each petitioner or the per-  
18 son to be adopted under ORS 109.329.

19 **“SECTION 3.** ORS 125.160 is amended to read:

20 “125.160. (1) At any time after the appointment of a fiduciary, the court  
21 may appoint a visitor. The court may require the visitor to perform any duty  
22 the visitor could have performed if appointed at the time the fiduciary was  
23 appointed, including interviewing relevant persons, examining relevant re-  
24 cords, reporting in writing to the court and being present at any hearing.

25 **“(2) In addition to the duties specified in subsection (1) of this sec-**  
26 **tion, the court may appoint a visitor to:**

27 **“(a) Investigate whether a protected person is no longer incapac-**  
28 **tated and whether the protected person remains in need of a fiduciary;**

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

30 **“(c) Evaluate the action or inaction of a fiduciary in order to assess**

1 **if the fiduciary remains suitable and qualified to serve as the fiduciary**  
2 **of the protected person; and**

3 **“(d) Assess whether a fiduciary should be removed for any reason,**  
4 **including that removal is in the best interests of the protected**  
5 **person.”.**

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