

D R A F T

SUMMARY

Requires court, under certain circumstances, to appoint legal counsel for respondent or protected person in protective proceeding. Requires payment for appointed counsel from guardianship or conservatorship estate of respondent or protected person or at state expense. Provides for phase-in among counties over three-year period beginning in 2020. Directs certain county circuit courts to make annual reports regarding protective proceeding statistics to Judicial Department. Directs Judicial Department to present results of reports in report to interim committees of Legislative Assembly related to judiciary. Sunsets reporting requirement on January 2, 2023.

A BILL FOR AN ACT

1
2 Relating to appointment of legal counsel for certain persons in protective
3 proceedings; creating new provisions; and amending ORS 125.080.

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

5 **SECTION 1.** ORS 125.080 is amended to read:

6 125.080. (1) The court may require that a hearing be held on any petition
7 or motion in a protective proceeding.

8 (2) A hearing must be held on a petition or motion if [*an*] **the respondent**
9 **or protected person makes or files an** objection [*is filed*] to the petition
10 or motion and the objection is not withdrawn before the time scheduled for
11 the hearing.

12 (3) The respondent or protected person may appear at a hearing in person
13 or by counsel.

14 (4)(a) If the court requires that a hearing be held [*on a petition,*] or a
15 hearing is otherwise required under this section, the court [*may*] **shall** ap-
16 point counsel for the respondent [*unless the respondent is already represented*

1 *by counsel.*] or protected person when:

2 (A) The respondent or protected person requests that counsel be
3 appointed;

4 (B) An objection is made or filed to the petition or motion by any
5 person;

6 (C) The court has appointed a visitor under ORS 125.150, 125.160 or
7 125.605, and the visitor recommends appointment of counsel for the
8 respondent or protected person; or

9 (D) The court determines that the respondent or protected person
10 is in need of legal counsel.

11 (b) The court is not required to appoint counsel under this sub-
12 section if the respondent or protected person is already represented
13 by counsel or otherwise objects to appointment of counsel.

14 (5) If the court appoints counsel under subsection (4) of this section:

15 (a) The court shall order payment of attorney fees and costs from
16 the guardianship or conservatorship estate of the respondent or pro-
17 tected person if sufficient funds exist to pay all or a portion of the
18 attorney fees and costs due; or

19 (b) The court may determine that a respondent or protected person
20 is financially eligible for appointed counsel at state expense and, if so,
21 the compensation for legal counsel and costs and expenses necessary
22 for representation of the respondent or protected person shall be de-
23 termined and paid by the public defense services executive director as
24 provided under ORS 135.055.

25 SECTION 2. (1) Each county circuit court shall report to the Judi-
26 cial Department, in accordance with rules adopted by the department,
27 statistics concerning protective proceedings in the county during the
28 prior two calendar years, including:

29 (a) The number of protective proceedings initiated;

30 (b) The number of guardianships granted;

31 (c) The number of guardianships denied;

1 (d) The number of alternatives to guardianships granted;

2 (e) The number of guardianships terminated or limited;

3 (f) The number of respondents or protected persons for whom the
4 court appointed counsel under ORS 125.080; and

5 (g) The aggregate number of hours counsel spent representing re-
6 spondents or protected persons.

7 (2) The reports required by this section shall be due annually no
8 later than July 1.

9 SECTION 3. The Judicial Department shall present the results of
10 the county reports under section 2 of this 2019 Act in a report to the
11 interim committees of the Legislative Assembly related to the judici-
12 ary no later than September 15, 2022.

13 SECTION 4. Section 2 of this 2019 Act is repealed on January 2, 2023.

14 SECTION 5. Section 2 of this 2019 Act applies only to:

15 (1) The circuit courts of Multnomah County or Lane County on or
16 after January 2, 2021; and

17 (2) The circuit courts of Columbia County on or after January 2,
18 2022.

19 SECTION 6. The amendments to ORS 125.080 by section 1 of this
20 2019 Act apply only to:

21 (1) Hearings taking place in Multnomah County or Lane County on
22 or after January 2, 2020;

23 (2) Hearings taking place in Columbia County on or after January
24 2, 2021; and

25 (3) Hearings taking place in any other county on or after January
26 2, 2022.