

SB 683 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Sub-Referral To: Senate Committee On Human Services

Meeting Dates: 2/5

WHAT THE MEASURE DOES:

Requires a guardian of a protected person to use a substitute judgment standard for decision making in guardianships. Requires promotion of self-determination and encouragement of the protected person to participate in the decision making process. Prohibits guardian from limiting a protected person's associations with others unless as allowed by court or as the guardian deems necessary to avoid unreasonable harm to the protected person's health, safety or well-being. Specifies process for modifying guardian's decisions on association. Allows court a range of remedies if it finds a guardian unreasonably limited associations, including permitting the association, modifying the powers of the guardian, removal of the guardian, and awarding attorney fees. Requires guardian to become or remain personally acquainted with the protected person. Includes description of limitations on association within the annual guardian's report.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

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. 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. Guardianship may be limited, but frequently removes significant decision making authority from the person and gives it to the guardian. Guardians may be making decisions on who a protected person communicates and visits with.

Senate Bill 683 restricts a guardian's ability to restrict contact between a protected person to situations in which the guardian determines it is necessary to avoid unreasonable harm to the person's health safety, or well-being. It provides a process for challenging a restriction. Additionally, the measure adopts the standards of practice from the National Guardianship Association into Oregon's statutes, including clearly laying out that guardians should use a substitute judgment standard for decision making. Substitute judgment is striving to make the decision the person would have made for themselves, if the person was making the decision, and requires the guardian to reasonably learn about the person's values, prior preferences, prior instructions, and opinions. If the guardian is unable to learn that information, the guardian then acts in a manner that is in the best interest of the person.