



Guardian/Conservator Association of Oregon, Inc.

Representative Jennifer Williamson, Chair
Representative Chris Gorsek, Vice-Chair
Representative Sherrie Sprenger, Vice-Chair
Representative Jeff Barker, Member
Representative Janelle Bynum, Member
Representative Mitch Greenlick, Member
Representative Rick Lewis, Member
Representative Mike McLane, Member
Representative Carla Piluso, Member
Representative Karin Power, Member
Representative Duane Stark, Member

Testimony submitted to: hjud.exhibits@oregonlegislature.gov

April 1, 2019

Re: House Bill 2601

Dear Chair Williamson, Vice-Chairs Gorsek and Sprenger, and members of the House Committee on Judiciary:

The Board of Directors of the Guardian/Conservator Association of Oregon (GCA) objects to House Bill 2601 and urges you to vote **No** on passage of this bill.

Specifically, the GCA Board objects to the restriction in the Bill of one of the guardian's most effective tools for preventing abuse and to the creation of vague or redundant standards for the guardian's authority. While HB 2601 substantially affects professional fiduciaries statewide, GCA was not contacted or included as a stakeholder in the discussion that resulted in the Bill. This letter explains who GCA is and why HB 2601 causes us great concern.

GCA is an organization of more than one hundred professional fiduciaries who serve as guardians and in other fiduciary roles throughout Oregon. GCA is an affiliate of the National Guardianship Association (NGA), and is the main provider, in Oregon, of required certification credits for professional fiduciaries through the national Center for Guardianship Certification (CGC). Often, GCA members serve in cases which vulnerable citizens need the assistance of a medical decisionmaker, and no friends or family are able or appropriate to serve.

Throughout Oregon, courts appoint GCA members to serve as guardians for elderly or disabled citizens who are the victims of financial and/or physical abuse. GCA members are particularly appropriate guardians in such cases because of how often the victim's friends or family members perpetrate the abuse. In such a case, one of the guardian's most important authorities is the power to prevent the abuser from maintaining physical or telephone contact with the victim. HB 2601 limits this authority by requiring the guardian to seek court authority prior to limiting contact, or by determining that limited contact is "necessary to avoid unreasonable harm to the protected

person's health safety or well-being." (Emphasis added). Aside from determining what constitutes "unreasonable harm," the guardian could then face challenge in court by the abuser who seeks to restore contact with the victim. Currently, Oregon law authorizes a guardian to limit contact with a protected person, and provides the opportunity to any person who considers such limitation to be unreasonable to make its case in court. Current law is therefore sufficient both to protect the vulnerable individual and to check the authority of the guardian.

Similarly, existing law already addresses the focus of HB 2601 on preserving a protected person's independence. While HB 2601 purports to establish the "new" duty of a guardian to "promote the self-determination of the protected person and, to the extent practicable, encourage the protected person to participate in decisions, act on the protected person's own behalf and develop or regain the capacity to manage the protected person's personal affairs," ORS 125.300 already establishes that "A guardianship for an adult person must be designed to encourage the development of maximum self-reliance and independence of the protected person and may be ordered only to the extent necessitated by the person's actual mental and physical limitations."

If HB 2601 only reiterated the guardian's existing duty to preserve the protected person's independence, the GCA Board would not be particularly concerned. However, HB 2601 goes further to require a guardian to "become or remain personally acquainted with the protected person," and to "make reasonable efforts to identify and facilitate supportive relationships" for the protected person." If the guardian fails to fulfill these duties, HB 2601 indicates that the court could remove the guardian. How does a guardian remain personally acquainted with a person suffering from late stage dementia? What constitutes a reasonable effort to identify a supportive relationship? These duties are vague and subject to a wide range of interpretations. They confuse, rather than clarify, the existing duty of the guardian to protect the health and welfare of the protected person.

GCA is aware that the idea of a guardian limiting a protected person's access to friends and family is a troubling one and should only be exercised with significant cause. However, Oregon legislators, just like GCA members, have worked with the victims of abuse enough to know that "friends and family" are not always what that term implies. To protect the existing and appropriate authority of the guardian, GCA urges the rejection of HB 2601.

Thank you for the opportunity to provide testimony on this bill.

Sincerely,

Stefanie Young,
President, Guardian/Conservator Association of Oregon,
on behalf of its board members

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