

## SB 891 STAFF MEASURE SUMMARY

### Senate Committee On Judiciary

---

**Action Date:** 04/01/19

**Action:** Do pass and requesting referral to Ways and Means.

**Vote:** 7-0-0-0

**Yeas:** 7 - Bentz, Fagan, Gelser, Linthicum, Manning Jr, Prozanski, Thatcher

**Fiscal:** Fiscal impact issued

**Revenue:** No revenue impact

**Prepared By:** Channa Newell, Counsel

**Meeting Dates:** 3/27, 4/1

---

#### WHAT THE MEASURE DOES:

Requires hearing on any petition for appointment of fiduciary by the Oregon Public Guardian and Conservator or county public guardian. Requires appointment of counsel for respondent in such cases. Specifies counsel is not required if respondent is represented or objects to appointment of counsel. Awards fees from estate of respondent if funds exist. Specifies that if appointment is at state expense, compensation must be paid by public defense services.

#### ISSUES DISCUSSED:

- Lack of due process in guardianship proceedings
- Protected person may lose civil liberties as a result of guardianship
- Examples of less restrictive alternatives when counsel appointed for individual
- Role of court visitor in guardianship proceedings

#### 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. Conservatorship is similar, but is limited to financial oversight. The appointment of a guardian or conservator, also called a fiduciary, 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. Guardians are often family or friends, but may also be professionals. Appointment of a guardian may be appropriate or necessary when an adult has significant developmental delays or illness, including dementia. Guardianship may be limited, but frequently removes significant decision making authority from the person and gives it to the guardian. The guardian may make decisions on a person's housing, daily activities, health care treatment, and finances. Under current law, a court may require a hearing in a guardianship proceeding when an objection is filed.

Senate Bill 891 requires a hearing on any petition for appointment of a fiduciary by the Oregon Public Guardian and Conservator or a county public guardian and conservator. The measure also requires appointment of counsel for the proposed protected person in such hearings, unless the person is already represented or objects to appointment of counsel. SB 891 specifies attorney fees for counsel are paid by the person's estate, if sufficient funds exist, or by the Office of Public Defense Services.