

Requested by Representative NATHANSON

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2601**

1 On page 1 of the printed bill, line 2, after “ORS” insert “125.080,  
2 125.225,” and after “125.315” insert “and 125.325”.

3 Delete lines 4 through 27 and delete pages 2 and 3 and insert:

4 **“SECTION 1. Section 2 of this 2019 Act is added to and made a part  
5 of ORS chapter 125.**

6 **“SECTION 2. (1) As used in this section:**

7 **“(a) ‘Association’ means communication, visitation or other social  
8 interaction with third parties; and**

9 **“(b) ‘Interested person’ means a protected person, a person with  
10 whom association is being limited, any fiduciary for the protected  
11 person or any person who has filed a request for notice in the pro-  
12 ceedings.**

13 **“(2) A guardian may not limit a protected person’s preferred asso-  
14 ciations, except:**

15 **“(a) As specifically allowed by the court; or**

16 **“(b) To the extent the guardian determines necessary to avoid un-  
17 reasonable harm to the protected person’s health, safety or well-being.**

18 **“(3) If a protected person is unable to communicate, the protected  
19 person’s preferred association shall be presumed based on the prior  
20 relationship between the protected person and the person with whom  
21 the association is contemplated.**

1       **“(4)(a) If a guardian limits a protected person’s association as pro-**  
2 **vided in subsection (2)(b) of this section, an interested person may**  
3 **move the court to modify the guardian’s powers with respect to lim-**  
4 **iting the association.**

5       **“(b) Motions under this subsection must be in writing, except that**  
6 **a protected person may move the court orally in person or by other**  
7 **means that are intended to convey the protected person’s motion to**  
8 **the court. The court shall designate the manner in which an oral**  
9 **motion may be made that ensures that a protected person will have**  
10 **the protected person’s motion presented to the court. The clerk of the**  
11 **court shall provide a means of reducing the oral motion to a signed**  
12 **writing for the purpose of filing the motion.**

13       **“(c) Any limits on a protected person’s associations in effect on the**  
14 **date a motion is filed under this subsection remain in effect pending**  
15 **the court’s action under paragraph (e) of this subsection.**

16       **“(d) The court shall schedule the hearing required under ORS**  
17 **125.080 (3) on a motion under this subsection no later than 60 days**  
18 **following the date the motion is filed with the court. The person**  
19 **making the motion shall give notice to all persons entitled to notice**  
20 **under ORS 125.060 (3) of the date, time and place of the scheduled**  
21 **hearing at least 15 days before the date set for the hearing. Notice**  
22 **shall be given in the manner prescribed by ORS 125.065. The court for**  
23 **good cause shown may provide for a different method or time of giving**  
24 **notice under this subsection.**

25       **“(e) If the court determines that the guardian unreasonably limited**  
26 **association under this section, the court may:**

27       **“(A) Permit the association, with or without limitations;**

28       **“(B) Modify the guardian’s powers to limit the protected person’s**  
29 **associations;**

30       **“(C) Remove the guardian; or**

1       **“(D) Award reasonable attorney fees and court costs associated with**  
2 **the motion.**

3       **“SECTION 3.** ORS 125.080 is amended to read:

4       “125.080. (1) The court may require that a hearing be held on any petition  
5 or motion in a protective proceeding.

6       “(2) A hearing must be held on a petition or motion if an objection is filed  
7 to the petition or motion and the objection is not withdrawn before the time  
8 scheduled for the hearing.

9       **“(3) A hearing must be held on a motion to modify a guardian’s**  
10 **powers under section 2 of this 2019 Act.**

11       “[(3)] (4) The respondent or protected person may appear at a hearing in  
12 person or by counsel.

13       “[(4)] (5) If the court requires that a hearing be held on a petition, or a  
14 hearing is otherwise required under this section, the court may appoint  
15 counsel for the respondent unless the respondent is already represented by  
16 counsel.

17       **“SECTION 4.** ORS 125.225 is amended to read:

18       “125.225. (1) A court shall remove a fiduciary whenever that removal is  
19 in the best interests of the protected person.

20       “(2) In addition to any other grounds, the court may remove a conservator  
21 if the conservator fails to use good business judgment and diligence in the  
22 management of the estate under the control of the conservator. The court  
23 may apply a higher standard of care to a conservator who claims to have  
24 greater than ordinary skill or expertise.

25       **“(3) In addition to any other grounds,** the court may remove a guardian  
26 **if the court determines the guardian:**

27       **“(a) Unreasonably limits the protected person’s associations under**  
28 **section 2 of this 2019 Act;**

29       **“(b) Fails to perform the guardian’s duties required under ORS**  
30 **125.315 (1)(g) to (i); or**

1 “(c) [*The guardian*] Changes the abode of the adult protected person or  
2 places the protected person in a mental health treatment facility, a nursing  
3 home or other residential facility and:

4 “[*(a)*] (A) Failed to disclose in the petition for appointment that the  
5 guardian intended to make the placement; or

6 “[*(b)*] (B) Failed to comply with ORS 125.320 (3) before making the  
7 placement.

8 “(4) On termination of the authority of a fiduciary, an interim fiduciary  
9 may be appointed by the court to serve for a period not to exceed 60 days.  
10 An interim fiduciary under this subsection may be appointed by the court  
11 without the appointment of a visitor, additional notices or any other addi-  
12 tional procedure, except as may be determined necessary by the court.

13 “(5) Upon termination of the authority of a fiduciary, the court may ap-  
14 point a successor fiduciary. A petition for appointment as successor fiduciary  
15 must be filed in the same manner as provided for an original petition, and  
16 is subject to all provisions applicable to an original petition for the ap-  
17 pointment of a fiduciary. No filing fee shall be charged or collected for the  
18 filing of a petition for the appointment of a successor fiduciary.

19 “**SECTION 5.** ORS 125.315 is amended to read:

20 “125.315. (1) A guardian has the following powers and duties:

21 “(a) Except to the extent of any limitation under the order of appoint-  
22 ment, the guardian has custody of the protected person and may establish the  
23 protected person’s place of abode within or without this state.

24 “(b) The guardian shall provide for the care, comfort and maintenance of  
25 the protected person and, whenever appropriate, shall arrange for training  
26 and education of the protected person. Without regard to custodial rights  
27 of the protected person, the guardian shall take reasonable care of the  
28 person’s clothing, furniture and other personal effects unless a conservator  
29 has been appointed for the protected person.

30 “(c) Subject to the provisions of ORS 127.505 to 127.660 and subsection (3)

1 of this section, the guardian may consent, refuse consent or withhold or  
2 withdraw consent to health care, as defined in ORS 127.505, for the protected  
3 person. A guardian is not liable solely by reason of consent under this par-  
4 agraph for any injury to the protected person resulting from the negligence  
5 or acts of third persons.

6 “(d) The guardian may:

7 “(A) Make advance funeral and burial arrangements;

8 “(B) Subject to the provisions of ORS 97.130, control the disposition of the  
9 remains of the protected person; and

10 “(C) Subject to the provisions of ORS 97.965, make an anatomical gift of  
11 all or any part of the body of the protected person.

12 “(e) The guardian of a minor has the powers and responsibilities of a  
13 parent who has legal custody of a child, except that the guardian has no  
14 obligation to support the minor beyond the support that can be provided from  
15 the estate of the minor, and the guardian is not liable for the torts of the  
16 minor. The guardian may consent to the marriage or adoption of a protected  
17 person who is a minor.

18 “(f) Subject to the provisions of ORS 125.320 (2), the guardian may receive  
19 money and personal property deliverable to the protected person and apply  
20 the money and property for support, care and education of the protected  
21 person. The guardian shall exercise care to conserve any excess for the pro-  
22 tected person’s needs.

23 **“(g) The guardian shall promote the self-determination of the pro-**  
24 **tected person and, to the extent practicable, encourage the protected**  
25 **person to participate in decisions, act on the protected person’s own**  
26 **behalf and develop or regain the capacity to manage the protected**  
27 **person’s personal affairs. To accomplish the duties under this para-**  
28 **graph, the guardian shall:**

29 **“(A) Become or remain personally acquainted with the protected**  
30 **person and maintain sufficient contact with the protected person, in-**

1 cluding through regular visitation, to know the protected person's  
2 abilities, limitations, needs, opportunities and physical and mental  
3 health;

4 “(B) To the extent practicable, identify the values and preferences  
5 of the protected person and involve the protected person in decisions  
6 affecting the protected person, including decisions about the protected  
7 person's care, dwelling, activities or social interactions; and

8 “(C) Make reasonable efforts to identify and facilitate supportive  
9 relationships and services for the protected person.

10 “(h) In making decisions for the protected person, the guardian  
11 shall make the decisions the guardian reasonably believes the pro-  
12 tected person would make if the protected person were able, unless  
13 doing so would unreasonably harm or endanger the welfare or personal  
14 or financial interests of the protected person. To determine the deci-  
15 sion the protected person would make if able, the guardian shall con-  
16 sider the protected person's previous or current instructions,  
17 preferences, opinions, values and actions, to the extent actually known  
18 or reasonably ascertainable by the guardian.

19 “(i) If the guardian cannot make a decision under paragraph (h) of  
20 this subsection because the guardian does not know and cannot rea-  
21 sonably determine the decision the protected person would make if  
22 able, or the guardian reasonably believes the decision the protected  
23 person would make would unreasonably harm or endanger the welfare  
24 or personal or financial interests of the protected person, the guardian  
25 shall act in accordance with the best interest of the protected person.  
26 In determining the best interest of the protected person, the guardian  
27 shall consider:

28 “(A) Information received from professionals and persons that  
29 demonstrate sufficient interest in the welfare of the protected person;

30 “(B) Other information the guardian believes the protected person

1 **would consider if the protected person were able; and**

2 **“(C) Other factors a reasonable person in the circumstances of the**  
3 **protected person would consider, including consequences for others.**

4 “(2) If a conservator has been appointed for the protected person, the  
5 guardian may file a motion with the court seeking an order of the court on  
6 the duties of the conservator relating to payment of support for the protected  
7 person.

8 “(3) A guardian may consent to the withholding or withdrawing of arti-  
9 ficially administered nutrition and hydration for a protected person only  
10 under the circumstances described in ORS 127.580 (1)(a), (b), (d), (e) or (f)  
11 and, if the protected person has a medical condition specified in ORS 127.580  
12 (1)(b), (d), (e) or (f), the condition has been medically confirmed.

13 **“SECTION 6.** ORS 125.325 is amended to read:

14 “125.325. Within 30 days after each anniversary of appointment, a guard-  
15 ian for an adult protected person shall file with the court a written report.  
16 The report must include a declaration under penalty of perjury in the form  
17 required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to  
18 194.835, if the declarant is physically outside the boundaries of the United  
19 States. Copies of the guardian’s report must be given to those persons spec-  
20 ified in ORS 125.060 (3). The report shall be in substantially the following  
21 form:

22 “ \_\_\_\_\_

23 **IN THE \_\_\_\_\_ COURT \_\_\_\_\_ COUNTY,**  
24 **STATE OF OREGON**  
25 **DEPARTMENT OF PROBATE**

26 In the Matter of the ) No. \_\_\_\_\_  
27 Guardianship of )  
28 \_\_\_\_\_, )  
29 (Name of protected )  
30 person) )

1 A Protected )  
2 Person. )

3 GUARDIAN'S REPORT

4 I am the guardian for the person named above, and I make the following  
5 report to the court as required by law:

6 1. My name is \_\_\_\_\_.

7 2. My address and telephone number are:

8 \_\_\_\_\_

9 \_\_\_\_\_

10 Phone \_\_\_\_\_

11 3. The name, if applicable, and address of the place where the person now  
12 resides are:

13 \_\_\_\_\_

14 \_\_\_\_\_

15 4. The person is currently residing at the following type of facility or  
16 residence:

17 \_\_\_\_\_

18 5. The person is currently engaged in the following programs and activ-  
19 ities and receiving the following services (brief description):

20 \_\_\_\_\_

21 6. I was paid for providing the following items of lodging, food or other  
22 services to the person:

23 \_\_\_\_\_

24 \_\_\_\_\_

25 7. The name of the person primarily responsible for the care of the person  
26 at the person's place of residence is:

27 \_\_\_\_\_

28 8. The name and address of any hospital or other institution where the  
29 person is now admitted on a temporary or permanent basis are:

30 \_\_\_\_\_



1 \_\_\_\_\_

2 9. The person’s physical condition is as follows (brief description):

3 \_\_\_\_\_

4 \_\_\_\_\_

5 10. The person’s mental condition is as follows (brief description):

6 \_\_\_\_\_

7 \_\_\_\_\_

8 11. Facts that support the conclusion that the person is incapacitated in-  
9 clude the following:

10 \_\_\_\_\_

11 12. I made the following contacts with the person during the past year  
12 (brief description):

13 \_\_\_\_\_

14 **13. I limited the person’s association with \_\_\_\_\_ (Please specifically**  
15 **name any limitations and briefly describe the limitation):**

16 \_\_\_\_\_

17 [13.] 14. I made the following major decisions on behalf of the person  
18 during the past year (brief description):

19 \_\_\_\_\_

20 [14.] 15. I believe the guardianship should or should not continue because:

21 \_\_\_\_\_

22 [15.] 16. At the time of my last report, I held the following amount of  
23 money on behalf of the person: \$\_\_\_\_\_. Since my last report, I received the  
24 following amount of money on behalf of the person: \$\_\_\_\_\_. I spent the  
25 following amount of money on behalf of the person: \$\_\_\_\_\_. I now hold  
26 the following amount of money on behalf of the person: \$\_\_\_\_\_.

27 [16.] 17. A true copy of this report will be given to the person, any  
28 conservator for the person and any other person who has requested notice.

29 [17.] 18. Since my last report:

30 (a) I have been convicted of the following crimes (not including traffic

1 violations):

2 \_\_\_\_\_

3 (b) I have filed for or received protection from creditors under the Federal  
4 Bankruptcy Code (yes or no): \_\_\_\_\_.

5 (c) I have had a professional or occupational license revoked or suspended  
6 (yes or no): \_\_\_\_\_.

7 (d) I have had my driver license revoked or suspended (yes or no):  
8 \_\_\_\_\_.

9 [18.] **19.** Since my last report, I have delegated the following powers over  
10 the protected person for the following periods of time (provide name of per-  
11 son powers delegated to):

12 \_\_\_\_\_

13 I hereby declare that the above statement is true to the best of my  
14 knowledge and belief, and that I understand it is made for use as evidence  
15 in court and is subject to penalty for perjury.

16 Dated this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

17 \_\_\_\_\_

18 Guardian

19 NOTICE: ANY PERSON INTERESTED IN THE AFFAIRS OR WEL-  
20 FARE OF THE PROTECTED PERSON WHO IS THE SUBJECT OF THIS  
21 REPORT WHO HAS CONCERNS ABOUT THIS REPORT OR THE  
22 GUARDIAN’S PERFORMANCE MAY CONTACT THE COURT AS FOL-  
23 LOWS:

24 \_\_\_\_\_

25 \_\_\_\_\_

26 \_\_\_\_\_

27 \_\_\_\_\_

28 \_\_\_\_\_

29 “ \_\_\_\_\_ ”.

30 \_\_\_\_\_