

Enrolled
Senate Bill 572

Sponsored by Senator WAGNER, Representative ALONSO LEON; Representatives DEXTER, HUDSON, MEEK, RUIZ, WILDE (Pre-session filed.)

CHAPTER

AN ACT

Relating to vulnerable youth; amending ORS 125.005, 125.025, 125.055, 125.060, 125.065, 125.080, 125.085, 125.090, 125.150, 125.300, 125.305, 125.320, 125.325 and 125.730; and prescribing an effective date.

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

SECTION 1. ORS 125.005 is amended to read:

125.005. As used in this chapter:

(1) "Conservator" means a person appointed as a conservator under the provisions of this chapter.

(2) "Fiduciary" means a guardian or conservator appointed under the provisions of this chapter or any other person appointed by a court to assume duties with respect to a protected person under the provisions of this chapter.

(3) "Financially incapable" means a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental retardation, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power or disappearance. "Manage financial resources" means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.

(4) "Guardian" means a person appointed as a guardian under the provisions of this chapter.

(5) "Incapacitated" means a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person's physical health or safety. "Meeting the essential requirements for physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

(6) "Minor" means any person who has not attained 18 years of age.

(7) "Protected person" means a person for whom a protective order has been entered.

(8) "Protective order" means an order of a court appointing a fiduciary or any other order of the court entered for the purpose of protecting the person or estate of a respondent or protected person.

(9) "Protective proceeding" means a proceeding under this chapter.

(10) "Respondent" means a person for whom entry of a protective order is sought in a petition filed under ORS 125.055.

(11) "Visitor" means a person appointed by the court under ORS 125.150 for the purpose of interviewing and evaluating a respondent or protected person.

(12) **"Vulnerable youth" means a person who:**

(a) Is at least 18 years of age but has not attained 21 years of age;

(b) Is eligible for classification under 8 U.S.C. 1101(a)(27)(J); and

(c) Cannot be reunified with one or more of the person's parents due to abuse, neglect or abandonment, that occurred when the person was a minor.

SECTION 2. ORS 125.025 is amended to read:

125.025. (1) Subject to ORS 125.800 to 125.852 for adults as defined in ORS 125.802, a court having jurisdiction over a protective proceeding shall exercise continuing authority over the proceeding. Subject to the provisions of ORS 125.800 to 125.852 and this chapter, the court may act upon the petition or motion of any person or upon its own authority at any time and in any manner it deems appropriate to determine the condition and welfare of the respondent or protected person and to inquire into the proper performance of the duties of a fiduciary appointed under the provisions of this chapter.

(2) A court having jurisdiction over a protective proceeding in which the respondent or protected person is a minor shall consider and apply all relevant provisions of the Indian Child Welfare Act codified at 25 U.S.C. sections 1901 et seq.

(3) A court having jurisdiction over a protective proceeding may:

(a) Compel the attendance of any person, including respondents, protected persons, fiduciaries and any other person who may have knowledge about the person or estate of a respondent or protected person. The court may require those persons to respond to inquiries and produce documents that are subject to discovery under ORCP 36.

(b) Appoint counsel for a respondent or protected person.

(c) Appoint investigators, visitors and experts to aid the court in the court's investigation.

(d) Exercise jurisdiction over any transaction entered into by a fiduciary to determine if a conflict of interest existed and enter an appropriate judgment with respect to the transaction.

(e) Surcharge a surety for any loss caused by failure of a fiduciary to perform a fiduciary duty or any other duty imposed by this chapter, including a surcharge for attorney fees incurred by a respondent or protected person by reason of the failure.

(f) Require immediate delivery of a protected person or property of the protected person, including records, accounts and documents relating to that property, to the court or to a place it designates.

(g) Require the fiduciary to produce any and all records that might provide information about the treatment or condition of the protected person or property of the protected person.

(h) Remove a fiduciary whenever that removal is in the best interests of the protected person.

(i) Appoint a successor fiduciary when a fiduciary has died, resigned or been removed.

(j) Require a respondent or protected person to submit to a physical or mental examination pursuant to ORCP 44.

(k) Make provisions for parenting time or visitation or order support for any minor who is a respondent or protected person in a protective proceeding.

(L) Impose any conditions and limitations upon the fiduciary that the court considers appropriate, including limitations on the duration of the appointment. Any conditions or limitations imposed on the fiduciary must be reflected in the letters of appointment.

(m) Appoint protected person special advocates pursuant to ORS 125.120.

(n) In a guardianship proceeding involving a vulnerable youth, allow a person whose attendance the court compels under paragraph (a) of this subsection to attend by telephone, video or other remote technology.

(4) When a person files a petition or motion for a support order under subsection (3)(k) of this section:

(a) The person shall state in the petition or motion, to the extent known:

(A) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the minor, including a proceeding brought under ORS 25.287, 25.501 to 25.556, 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 419B.400 or 419C.590 or ORS chapter 110; and

(B) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.503, involving the minor.

(b) The person shall include with the petition or motion a certificate regarding any pending support proceeding and any existing support order. The person shall use a certificate that is in a form established by court rule and include information required by court rule and paragraph (a) of this subsection.

(5) When the court acts upon its own authority to order support under subsection (3)(k) of this section, at least 21 days before the hearing the court shall notify the Administrator of the Division of Child Support of the Department of Justice, or the branch office providing support services to the county where the hearing will be held, of the hearing. Before the hearing the administrator shall inform the court, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the minor, including a proceeding brought under ORS 25.287, 25.501 to 25.556, 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.503, involving the minor.

(6) The Judicial Department and the Department of Justice may enter into an agreement regarding how the courts give the notice required under subsection (5) of this section to the Department of Justice and how the Department of Justice gives the information described in subsection (5)(a) and (b) **of this section** to the courts.

(7) If the court finds that a conservator should be appointed, the court may exercise all the powers over the estate and affairs of the protected person that the protected person could exercise if present and not under disability, except the power to make a will. The court shall exercise those powers for the benefit of the protected person and members of the household of the protected person.

(8) The powers of the court in protective proceedings may be exercised by the court directly or through a fiduciary.

SECTION 3. ORS 125.055 is amended to read:

125.055. (1) A petition in a protective proceeding that seeks the appointment of a fiduciary must designate the type of fiduciary that the petitioner seeks to have appointed. If the petition does not request the appointment of a fiduciary, or if the petition requests both the appointment of a fiduciary and some other protective order, the petition must contain a statement of the nature of the protective order requested. The caption of the petition must reflect the type of fiduciary whose appointment is requested or, if the appointment of a fiduciary is not requested, the nature of the protective order requested. An original and duplicate copy of the petition must be filed with the court.

(2) A petition in a protective proceeding must contain the following information to the extent that the petitioner is aware of the information or to the extent that the petitioner is able to acquire the information with reasonable effort:

(a) The name, age, residence address and current location of the respondent.

(b) The interest of the petitioner.

(c) The name, age and address of the petitioner and any person nominated as fiduciary in the petition and the relationship of the person nominated to the respondent.

(d) A statement as to whether the person nominated as fiduciary:

(A) Has been convicted of a crime;

(B) Has filed for or received protection under the bankruptcy laws;

(C) Has caused any loss resulting in a surcharge under ORS 125.025 (3)(e) or a similar statute of another jurisdiction;

(D) Has been removed as a fiduciary under ORS 125.225; or

(E) Has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation.

(e) If an event listed in paragraph (d) of this subsection has occurred, a statement of the circumstances surrounding the event.

(f) If the person nominated as fiduciary is not the petitioner, a statement indicating that the person nominated is willing and able to serve.

(g) The name and address of any fiduciary that has been appointed for the respondent by a court of any state, any trustee for a trust established by or for the respondent, any person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and any person acting as attorney-in-fact for the respondent under a power of attorney.

(h) The name and address of the respondent's treating physician and any other person who is providing care to the respondent.

(i) The factual information that:

(A) Except as provided in subparagraph (B) of this paragraph, supports the request for the appointment of a fiduciary or entry of other protective order, less restrictive alternatives to the appointment of a fiduciary that have been considered and why the alternatives are inadequate and the names and addresses of all persons who have information that would support a finding that an adult respondent is incapacitated or financially incapable.

(B) If the petition seeks appointment of a guardian for a vulnerable youth, supports a finding that the proposed protected person is a vulnerable youth.

(j) A statement that indicates whether the person nominated as fiduciary intends to place the respondent in a mental health treatment facility, a nursing home or other residential facility.

(k) A general description of the estate of the respondent and the respondent's sources of income and the amount of that income.

(L) A statement indicating whether the person nominated as fiduciary is a public or private agency or organization that provides services to the respondent or an employee of a public or private agency or organization that provides services to the respondent.

(m) A statement that indicates whether the petitioner is petitioning for plenary authority or specified limited authority for the person nominated as fiduciary.

(3) In addition to the requirements of subsection (2) of this section:

(a) If a petition seeks appointment of a guardian, the petition must contain a statement on whether the guardian will exercise any control over the estate of the respondent. If the guardian will exercise any control over the estate of the respondent, the petition must contain a statement of the monthly income of the respondent, the sources of the respondent's income, and the amount of any moneys that the guardian will be holding for the respondent at the time of the appointment.

(b) **Except as provided in paragraph (c) of this subsection,** if the petition seeks the appointment of a guardian for an adult respondent, of a guardian for a minor respondent who is more than 16 years of age, in cases where the court determines there is the likelihood that a petition seeking appointment of a guardian for the respondent as an adult will be filed before the date that the respondent attains majority, in accordance with subsection (6)(a) of this section, or as an adult, or of a temporary fiduciary who will exercise the powers of a guardian for an adult respondent, the petition must contain a statement notifying the court that a visitor must be appointed.

(c) If the petition seeks appointment of a guardian for a vulnerable youth, the petition must include:

(A) A statement that the court in its discretion may appoint a visitor; and

(B) Except as provided in subsection (6)(b) of this section, a declaration signed by the vulnerable youth consenting to the appointment of the proposed guardian.

(4) In addition to the requirements of subsection (2) of this section, if a petition seeks appointment of a conservator or a temporary fiduciary who will exercise the powers of a conservator or if

a petition seeks a protective order relating to the estate of the respondent, the petition must contain the petitioner's estimate of the value of the estate.

(5) A petitioner may join parties in a petition in the manner provided by ORCP 28 for the joining of defendants.

(6)(a) A parent or guardian of a minor may file a petition that seeks the appointment of a guardian for the minor as an adult, to become effective on the date that the minor attains majority, at any time within 90 days before the date that the minor attains majority or at any other time determined by the court to be necessary and appropriate to ensure the ongoing protection, safety and welfare of the minor upon attaining majority.

(b) If a petition for the appointment of a guardian for a vulnerable youth is filed when the respondent is a minor, the declaration of consent to appointment required under subsection (3)(c) of this section must be filed no later than 10 days after the respondent attains the age of majority.

(7) The court shall review a petition seeking appointment of a guardian and shall dismiss the proceeding without prejudice, or require that the petition be amended, if the court determines that the petition does not meet the requirements of this section.

SECTION 4. ORS 125.060 is amended to read:

125.060. (1) The notices required by this section must be given to all persons whose identities and addresses can be ascertained in the exercise of reasonable diligence by the person required to give the notice.

(2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other protective order must be given by the petitioner to the following persons:

(a) The respondent, if the respondent has attained 14 years of age **unless the petition is for the appointment of a guardian for a vulnerable youth who has attained 18 years of age and the respondent's declaration consenting to the appointment has been filed with the court.**

(b) The spouse, parents and adult children of the respondent.

(c) If the respondent does not have a spouse, parent or adult child, the person or persons most closely related to the respondent.

(d) Any person who is cohabiting with the respondent and who is interested in the affairs or welfare of the respondent.

(e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the respondent by a court of any state, any trustee for a trust established by or for the respondent, any person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and any person acting as attorney-in-fact for the respondent under a power of attorney.

(f) If the respondent is a minor, the person who has exercised principal responsibility for the care and custody of the respondent during the 60-day period before the filing of the petition.

(g) If the respondent is a minor and has no living parents, any person nominated to act as fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.

(h) If the respondent is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for the payments to the protected person.

(i) If the respondent is receiving moneys paid or payable for public assistance provided under ORS chapter 411 by the State of Oregon through the Department of Human Services, a representative of the department.

(j) If the respondent is receiving moneys paid or payable for medical assistance provided under ORS chapter 414 by the State of Oregon through the Oregon Health Authority, a representative of the authority.

(k) If the respondent is committed to the legal and physical custody of the Department of Corrections, the Attorney General and the superintendent or other officer in charge of the facility in which the respondent is confined.

(L) If the respondent is a foreign national, the consulate for the respondent's country.

(m) Any other person that the court requires.

(3) Notice of a motion for the termination of the protective proceedings, for removal of a fiduciary, for modification of the powers or authority of a fiduciary, for approval of a fiduciary's actions or for protective orders in addition to those sought in the petition must be given by the person making the motion to the following persons:

(a) The protected person, if the protected person has attained 14 years of age.

(b) Any person who has filed a request for notice in the proceedings.

(c) Except for a fiduciary who is making a motion, any fiduciary who has been appointed for the protected person.

(d) If the protected person is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for the payments to the protected person.

(e) If the protected person is committed to the legal and physical custody of the Department of Corrections, the Attorney General and the superintendent or other officer in charge of the facility in which the protected person is confined.

(f) If the protected person is a vulnerable youth, the consulate of the vulnerable youth's country of nationality or, if unknown, the consulate of the vulnerable youth's last country of residence prior to the United States of America.

[(f)] (g) Any other person that the court requires.

(4) A request for notice under subsection (3)(b) of this section must be in writing and include the name, address and phone number of the person requesting notice. A copy of the request must be mailed by the person making the request to the petitioner or to the fiduciary if a fiduciary has been appointed. The original request must be filed with the court. The person filing the request must pay the fee specified by ORS 21.135.

(5) A person who files a request for notice in the proceedings in the manner provided by subsection (4) of this section is entitled to receive notice from the fiduciary of any motion specified in subsection (3) of this section and of any other matter to which a person listed in subsection (2) of this section is entitled to receive notice under a specific provision of this chapter.

(6) If the Department of Human Services is nominated as guardian for the purpose of consenting to the adoption of a minor, the notice provided for in this section must also be given to the minor's brothers, sisters, aunts, uncles and grandparents.

(7) In addition to the requirements of subsection (2) of this section, notice of the filing of a petition for the appointment of a guardian for a person who is alleged to be incapacitated must be given by the petitioner to the following persons:

(a) Any attorney who is representing the respondent in any capacity.

(b) If the respondent is a resident of a nursing home or residential facility, or if the person nominated to act as fiduciary intends to place the respondent in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

(c) If the respondent is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the person nominated to act as fiduciary intends to place the respondent in such a facility, the system described in ORS 192.517 (1).

(8) In addition to the requirements of subsection (3) of this section, in a protective proceeding in which a guardian has been appointed, notice of the motions specified in subsection (3) of this section, and the address, telephone number and other contact information of the protected person, must be given by the person making the motion to the following persons:

(a) Any attorney who represented the protected person at any time during the protective proceeding.

(b) If the protected person is a resident of a nursing home or residential facility, or if the motion seeks authority to place the protected person in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

(c) If the protected person is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the motion seeks authority to place the protected person in such a facility, the system described in ORS 192.517 (1).

(9) A respondent or protected person may not waive the notice required under this section.

(10) The requirement that notice be served on an attorney for a respondent or protected person under subsection (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney receiving the notice to represent the respondent or protected person in the protective proceeding.

SECTION 5. ORS 125.065 is amended to read:

125.065. (1) **Except as provided in ORS 125.060**, notice of the filing of a petition must be personally served on any respondent who has attained 14 years of age. Notice of a petition must be personally served on the parents of a respondent if the petition is based on the fact that the respondent is a minor. The notice may not be served on the respondent by the visitor appointed by the court. The notice shall be written in language reasonably understandable by the respondent. The notice must be printed in type size equal to at least 12-point type.

(2) Except as provided in subsection (1) of this section, the notices required under ORS 125.060 may be mailed to the last-known address of the person. If the address or identity of any person is not known and cannot be ascertained with reasonable diligence, notice of the filing of a petition may be given by publishing at least once a week for three consecutive weeks a copy of the notice in a newspaper having general circulation in the county where the hearing is to be held. The last publication of the notice must be at least 15 days before the final date for the filing of objections.

(3) The date of personal service or mailing under this section must be at least 15 days before the final date for the filing of objections to the petition or motion. If the proceedings are subject to the Uniform Child Custody Jurisdiction and Enforcement Act provided for in ORS 109.701 to 109.834, the date of service or mailing must be at least 21 days before the final date for the filing of objections to the petition or motion.

(4) The court for good cause shown may provide for a different method or time of giving notice under this section.

(5) Proof of the giving of notice must be filed in the proceeding before the court enters any order on a petition or motion.

SECTION 6. ORS 125.080 is amended to read:

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

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

(3) A hearing must be held on a motion to modify a guardian's powers under ORS 125.323.

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

(5) If the hearing is regarding a petition for appointment of a guardian for a vulnerable youth or a petition involving a vulnerable youth guardianship, the court:

(a) May allow the respondent or protected person, proposed guardian, guardian or any other witness to appear by telephone, video or other remote technology;

(b)(A) May take testimony from or confer with the respondent or protected person and may exclude from the conference others if the court finds that doing so would be in the best interests of the respondent or protected person; and

(B) Notwithstanding subparagraph (A) of this paragraph, shall permit any attorney for the respondent or protected person to attend the conference and the conference must be reported;

(c) May not inquire into the nationality or current immigration status of the proposed guardian, guardian or any other witness; and

(d) May not inquire about any prior immigration status of the respondent or protected person or about the manner or place in which the respondent or protected person entered the United States of America.

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

SECTION 7. ORS 125.085 is amended to read:

125.085. (1) The court may remove a fiduciary on the motion of any person who is entitled to file an objection to a petition under the provisions of ORS 125.075, on a motion of the Long Term Care Ombudsman or upon the court's own motion.

(2) On motion of the fiduciary, the court may accept the resignation of the fiduciary and make any other order that may be appropriate, including appointment of a successor fiduciary.

(3) **Except as provided in subsection (5) of this section**, upon motion by any person who is entitled to file an objection to a petition under the provisions of ORS 125.075, on a motion of the Long Term Care Ombudsman or upon the court's own motion, the court may order a modification of the powers or authority of the fiduciary or termination of the protective proceedings.

(4)(a) When the Long Term Care Ombudsman files a motion under this section, the ombudsman shall disclose to the court only:

(A) Such information as is allowed under ORS 441.407; and

(B) The minimum amount of protected information about the resident who is the subject of the motion that the ombudsman believes in good faith is reasonably necessary to prevent or lessen a serious and imminent threat to the health or safety of a resident of a long term care facility, residential facility or adult foster home.

(b) Any protected information disclosed by the ombudsman under this subsection shall remain confidential and must be identified and marked by the ombudsman as confidential and protected information that is subject to the requirements of this subsection.

(c) Protected information disclosed under this subsection is subject to inspection only by the parties to the proceeding and their attorneys as provided in paragraph (d) of this subsection. Protected information disclosed under this subsection is not subject to inspection by members of the public except pursuant to a court order entered after a showing of good cause.

(d) The court may enter an order allowing inspection of protected information subject to disclosure under this subsection upon the filing of a written request for inspection and the payment of any fees or costs charged to copy the protected information.

(e) Notwithstanding ORS 125.155 (4), to the extent that the report of a visitor appointed by the court under ORS 125.150 contains protected information that is subject to the requirements of this subsection, the report in its entirety shall be considered subject to the requirements of this subsection and may be disclosed only as provided in paragraphs (c) and (d) of this subsection.

(5) If the guardianship is for a vulnerable youth:

(a) The court may modify the guardianship upon motion of the protected person or upon the court's own motion. The motion seeking to modify the guardianship must be supported by a declaration setting forth the facts. The motion and supporting declaration must be served on the guardian and, if appropriate, any proposed guardian.

(b) A guardian may seek to have the guardianship modified at any time by filing a motion with the court that is supported by a declaration establishing that a substantial change has occurred in the circumstances of the protected person or the guardian and that the requested modification would serve the best interests of the protected person.

SECTION 8. ORS 125.090 is amended to read:

125.090. (1) A protected person is entitled to the same rights and procedures provided in the original proceedings when a motion to terminate the protective proceeding is filed and a fiduciary opposes the motion. The fiduciary has the burden of proving by clear and convincing evidence that a protected person continues to be incapacitated or financially incapable if a motion to terminate a protective proceeding is filed and the fiduciary opposes the motion. A visitor must be appointed if a motion for termination of a guardianship is filed and objections are filed to the motion. A visitor may be appointed if a motion for termination of a conservatorship is filed.

(2) The court may terminate protective proceedings upon motion after determining any of the following:

(a) The appointment of a fiduciary or other protective order was made because the protected person was a minor, and the protected person has attained the age of majority.

(b) The appointment of a fiduciary or other protective order was made because the protected person was incapacitated, and the protected person is no longer incapacitated.

(c) The appointment of a fiduciary or other protective order was made because the protected person was financially incapable, and the protected person is no longer financially incapable or the conditions of ORS 125.535 have been met.

(d) The protected person has died.

(e) The best interests of the protected person would be served by termination of the proceedings.

(f) If the appointment of a guardian was made because the protected person was a vulnerable youth:

(A) The protected person has attained 21 years of age;

(B) The protected person moved the court to terminate the guardianship; or

(C)(i) The guardian or other person moved the court to terminate the guardianship;

(ii) The motion is supported by a declaration establishing that a substantial change has occurred in the circumstances of the protected person or of the guardian; and

(iii) The best interests of the protected person would be served by termination of the guardianship.

(3) The court shall terminate a protective proceeding by entry of a general judgment.

SECTION 9. ORS 125.150 is amended to read:

125.150. (1)(a) The court shall appoint a visitor upon the filing of a petition in a protective proceeding that seeks the appointment of:

(A) A guardian for an adult respondent;

(B) A guardian for a minor respondent who is more than 16 years of age, in cases where the court determines there is the likelihood that a petition seeking appointment of a guardian for the respondent as an adult will be filed before the date that the respondent attains majority, in accordance with ORS 125.055 (6)(a), or as an adult; or

(C) A temporary fiduciary who will exercise the powers of a guardian for an adult respondent.

(b) Notwithstanding paragraph (a) of this subsection, if a petition in a protective proceeding seeks the appointment of a guardian for a respondent because the respondent is, or, if the respondent is a minor, will be a vulnerable youth, the court in its discretion may appoint a visitor.

[(b)] (c) The court may appoint a visitor in any other protective proceeding or in a proceeding under ORS 109.329.

(2) A visitor may be an officer, employee or special appointee of the court. The person appointed may not have any personal interest in the proceedings. The person appointed must have training or expertise adequate to allow the person to appropriately evaluate the functional capacity and needs of a respondent or protected person, or each petitioner and the person to be adopted under ORS 109.329. The court shall provide a copy of the petition and other filings in the proceedings that may be of assistance to the visitor.

(3) A visitor appointed by the court under this section shall interview a person nominated or appointed as fiduciary and the respondent or protected person, or each petitioner and the person to be adopted under ORS 109.329, personally at the place where the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, is located.

(4) Subject to any law relating to confidentiality, the visitor may interview any physician, naturopathic physician or psychologist who has examined the respondent or protected person, or each petitioner under ORS 109.329, the person or officer of the institution having the care, custody or control of the respondent or protected person, or each petitioner under ORS 109.329, and any other person who may have relevant information.

(5) If requested by a visitor under subsection (4) of this section, a physician, naturopathic physician or psychologist who has examined the respondent or protected person, or each petitioner under ORS 109.329, may, with patient authorization or, in the case of a minor respondent, with the authorization of the minor's parent or the person having custody of the minor, or in response to a court order in accordance with ORCP 44 or a subpoena under ORCP 55, provide any relevant in-

formation the physician, naturopathic physician or psychologist has regarding the respondent or protected person, or each petitioner under ORS 109.329.

(6) A visitor shall determine whether it appears that the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, is able to attend the hearing and, if able to attend, whether the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, is willing to attend the hearing.

(7) If a petition is filed seeking the appointment of a guardian for an adult respondent, a visitor shall investigate the following matters:

(a) The inability of the respondent to provide for the needs of the respondent with respect to physical health, food, clothing and shelter;

(b) The location of the respondent's residence and the ability of the respondent to live in the residence while under guardianship;

(c) Alternatives to guardianship considered by the petitioner and reasons why those alternatives are not available;

(d) Health or social services provided to the respondent during the year preceding the filing of the petition, when the petitioner has information as to those services;

(e) The inability of the respondent to resist fraud or undue influence; and

(f) Whether the respondent's inability to provide for the needs of the respondent is an isolated incident of negligence or improvidence, or whether a pattern exists.

(8) If a petition is filed seeking the appointment of a fiduciary, a visitor shall determine whether the respondent objects to:

(a) The appointment of a fiduciary; and

(b) The nominated fiduciary or prefers another person to act as fiduciary.

(9) If a petition is filed seeking the appointment of a conservator in addition to the appointment of a guardian, a visitor shall investigate whether the respondent is financially incapable. The visitor shall interview the person nominated to act as conservator and shall interview the respondent personally at the place where the respondent is located.

(10) A visitor shall determine whether the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, wishes to be represented by counsel and, if so, whether the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, has retained counsel and, if not, the name of an attorney the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, wishes to retain.

(11) If the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, has not retained counsel, a visitor shall determine whether the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, desires the court to appoint counsel.

(12) If the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, does not plan to retain counsel and has not requested the appointment of counsel by the court, a visitor shall determine whether the appointment of counsel would help to resolve the matter and whether appointment of counsel is necessary to protect the interests of the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329.

SECTION 10. ORS 125.300 is amended to read:

125.300. (1)(a) **Except as provided in paragraph (b) of this subsection,** a guardian may be appointed for an adult person only as is necessary to promote and protect the well-being of the protected person. 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.

(b) A guardian may be appointed for an adult person if there is clear and convincing evidence that the person is a vulnerable youth. A guardianship for a vulnerable youth must be designed to encourage the development of maximum self-reliance and independence of the vulnerable youth and may be ordered only to the extent that the vulnerable youth consents

and that is necessitated by the circumstances justifying the appointment of a guardian for the vulnerable youth.

(2) An adult protected person for whom a guardian has been appointed is not presumed to be incompetent.

(3) A protected person retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the person include but are not limited to the right to contact and retain counsel and to have access to personal records.

SECTION 11. ORS 125.305 is amended to read:

125.305. (1) After determining that conditions for the appointment of a guardian have been established, the court may appoint a guardian as requested if the court determines by clear and convincing evidence that:

(a) The respondent is a minor in need of a guardian, [or] the respondent is incapacitated **or the respondent is a vulnerable youth;**

(b) The appointment is necessary as a means of providing continuing care and supervision of the respondent; and

(c) The nominated person is both qualified and suitable, and is willing to serve.

(2) The court shall make a guardianship order that is no more restrictive upon the liberty of the protected person than is reasonably necessary to protect the person. In making the order the court shall consider the information in the petition, the report of the visitor, the report of any physician, naturopathic physician or psychologist who has examined the respondent, if there was an examination, and the evidence presented at any hearing.

(3) The court may require that a guardian post bond.

(4) The Department of Human Services may be appointed guardian of a minor if the minor has no living parents and if no willing, qualified and suitable relative or other person has petitioned the court for appointment as a guardian.

SECTION 12. ORS 125.320 is amended to read:

125.320. (1) A guardian may not authorize the sterilization of the protected person.

(2) A guardian may not use funds from the protected person's estate for room and board that the guardian or guardian's spouse, parent or child have furnished the protected person unless the charge for the service is approved by order of the court before the payment is made.

(3)(a) Before a guardian may change the abode of an adult protected person or place an adult protected person in a mental health treatment facility, a nursing home or other residential facility, the guardian must file with the court and serve a statement declaring that the guardian intends to make the change of abode or placement in the manner set forth in paragraph (b) of this subsection.

(b)(A) The statement must be filed and served in the manner provided for serving a motion under ORS 125.065 to the persons specified in ORS 125.060 (3) and (8) at least 15 days prior to each change of abode or placement of the protected person.

(B) When the guardian determines that the change of abode or placement must occur in less than 15 days to protect the immediate health, welfare or safety of the protected person or others, the statement shall declare that the change of abode or placement must occur in less than 15 days to protect the immediate health, welfare or safety of the protected person or others. The statement must be filed and served with as much advance notice as possible, in no event later than two judicial days after the change of abode or placement occurs. The guardian may make the change of abode or placement prior to a hearing on any objection.

(c) In addition to the requirements of ORS 125.070 (1), the notice given to the protected person must clearly indicate the manner in which the protected person may object to the proposed placement.

(d) The court shall schedule a hearing on any objection to a statement filed under this subsection made in the manner provided by ORS 125.075 for presenting objections to a petition or motion in a protective proceeding. If no objection is made, the guardian may change the abode of the

adult protected person or place the adult protected person in a mental health treatment facility, a nursing home or other residential facility without further court order.

(e) The requirement that notice be served on an attorney for a protected person under ORS 125.060 (8) does not impose any responsibility on the attorney receiving the notice to represent the protected person in the protective proceeding.

(4) A guardian for a protected person who is a vulnerable youth may not possess or control the vulnerable youth's identity documents.

SECTION 13. ORS 125.325 is amended to read:

125.325. (1) Not later than 30 days following each anniversary of appointment, a guardian for an adult protected person shall file with the court a written report. The report must include a declaration under penalty of perjury in the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the United States. Copies of the guardian's report must be given to those persons specified in ORS 125.060 (3).

Except as provided in subsection (6) of this section, the report [*shall*] **must** be in substantially the following form:

IN THE _____ COURT _____ COUNTY,
STATE OF OREGON
DEPARTMENT OF PROBATE

In the Matter of the) No. _____
Guardianship of)
_____,)
(Name of protected)
person))
A Protected)
Person.)

GUARDIAN'S REPORT

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

1. My name is _____.
2. My address and telephone number are:

Phone _____

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

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

5. The person is currently engaged in the following programs and activities and receiving the following services (brief description):

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

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

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

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

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

11. Facts that support the conclusion that the person is incapacitated include the following:

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

13. I limited the person's association with _____ (Please specifically name any limitations and briefly describe the limitation):

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

15. I believe the guardianship should or should not continue because:

16. At the time of my last report, I held the following amount of money on behalf of the person: \$_____. Since my last report, I received the following amount of money on behalf of the person: \$_____. I spent the following amount of money on behalf of the person: \$_____. I now hold the following amount of money on behalf of the person: \$_____.

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

18. Since my last report:

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

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

(c) I have had a professional or occupational license revoked or suspended (yes or no):
_____.

(d) I have had my driver license revoked or suspended (yes or no): _____.

19. Since my last report, I have delegated the following powers over the protected person for the following periods of time (provide name of person powers delegated to):

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

Dated this ____ day of _____, 2_____.

Guardian

NOTICE: ANY PERSON INTERESTED IN THE AFFAIRS OR WELFARE OF THE PROTECTED PERSON WHO IS THE SUBJECT OF THIS REPORT WHO HAS CONCERNS ABOUT THIS REPORT OR THE GUARDIAN'S PERFORMANCE MAY CONTACT THE COURT AS FOLLOWS:

(2) If the guardian indicates in the report under subsection (1) of this section that the guardianship should not continue or fails to provide adequate information in the report supporting the continuing need for the guardianship, the court shall order the guardian to supplement the report or **to** file a motion to terminate the protective proceeding under ORS 125.090.

(3) Failure of the guardian to comply with an order under subsection (2) of this section before the 30th day following the date of the order is grounds for removal under ORS 125.225 (1).

(4) If the guardian fails to comply with an order issued under subsection (2) of this section, the court, on its own motion or on the petition of any other person, shall order the guardian to appear and show cause why the guardian should not be removed.

(5) The court shall serve a copy of any order issued under subsection (2) or (4) of this section and a copy of the report filed under subsection (1) of this section and supplemental materials, if any, upon those persons entitled to notice under ORS 125.060 (3).

(6) If a guardian was appointed because the protected person is a vulnerable youth, the court may in its discretion:

(a) Require a guardian for a vulnerable youth to file written reports with the court more frequently than required under subsection (1) of this section; or

(b) Permit the report to be in an alternate form approved in advance by the court.

SECTION 14. ORS 125.730 is amended to read:

125.730. (1) No fee shall be charged or received by any court having probate jurisdiction for the filing of any petition asking for the appointment of the county public guardian and conservator as the guardian or conservator or for any official service performed by that court in the course of the guardianship or conservatorship proceedings.

(2) No fee shall be charged or received by any court having probate jurisdiction for the filing of any petition asking for the appointment of a guardian for a vulnerable youth or for any official service performed by that court in the course of the guardianship.

SECTION 15. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by Senate March 11, 2021

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 9, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State