

Enrolled
Senate Bill 578

Sponsored by Senator DEMBROW, Representatives WILDE, PRUSAK; Senator MANNING JR,
Representative POWER (Presession filed.)

CHAPTER

AN ACT

Relating to appointment of legal counsel for certain persons in protective proceedings; creating new provisions; and amending ORS 125.080.

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

SECTION 1. 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]* **the respondent or protected person makes or files an objection** *[is filed]* to the petition or motion and the objection is not withdrawn before the time scheduled for the hearing.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)(a) If the court requires that a hearing be held *[on a petition,]* or a hearing is otherwise required under this section, the court *[may]* **shall** appoint counsel for the respondent *[unless the respondent is already represented by counsel.]* **or protected person when:**

(A) The respondent or protected person requests that counsel be appointed;

(B) An objection is made or filed to the petition or motion by any person;

(C) The court has appointed a visitor under ORS 125.150, 125.160 or 125.605, and the visitor recommends appointment of counsel for the respondent or protected person; or

(D) The court determines that the respondent or protected person is in need of legal counsel.

(b) The court is not required to appoint counsel under this subsection if the respondent or protected person is already represented by counsel or otherwise objects to appointment of counsel.

(6) If the court appoints counsel under subsection (5) of this section:

(a) The court shall order payment of attorney fees and costs from the guardianship or conservatorship estate of the respondent or protected person if sufficient funds exist to pay all or a portion of the attorney fees and costs due; or

(b) The court may determine that a respondent or protected person is financially eligible for appointed counsel at state expense and, if so, the compensation for legal counsel and costs and expenses necessary for representation of the respondent or protected person shall be determined and paid by the public defense services executive director as provided under ORS 135.055.

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

(a) “Case subtype” means guardianship, conservatorship or guardianship and conservatorship.

(b) “Case type” means adult protective proceeding or minor protective proceeding.

(2) No later than September 15 of each year, the Judicial Department shall submit, to the interim committees of the Legislative Assembly related to the judiciary, a report on county-level data concerning protective proceedings in Multnomah, Lane and Columbia Counties during the two calendar years immediately preceding the year of the report, including:

(a) The number of protective proceedings initiated, broken out by case type and case subtype;

(b) The number of protective proceedings where the respondent was 65 years of age or older at the time the petition was filed;

(c) The number of protective proceedings granted, broken out by case type and case subtype; and

(d) The number of respondents or protected persons for whom the court appointed counsel under ORS 125.080, broken out by case subtype.

(3) The department, in consultation with the office of public defense services, shall also include in the report described in subsection (2) of this section, to the extent the data is available:

(a) The number of cases with court appointed counsel where payment for court appointed counsel was from the assets of the respondent or protected person, broken out by case subtype; and

(b) The aggregate number of hours court appointed counsel spent representing respondents or protected persons and the average number of hours court appointed counsel spent per case.

SECTION 3. The Judicial Department shall submit the first report required under section 2 of this 2021 Act no later than September 15, 2024, and annually thereafter.

SECTION 4. The amendments to ORS 125.080 by section 1 of this 2021 Act apply only to:

(1) Hearings taking place in Multnomah County and Lane County on or after January 2, 2022;

(2) Hearings taking place in Columbia County on or after January 2, 2023; and

(3) Hearings taking place in any other county on or after January 2, 2024.

Passed by Senate April 14, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 9, 2021

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Tina Kotek, Speaker of House

Received by Governor:

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

Approved:

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

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Kate Brown, Governor

Filed in Office of Secretary of State:

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

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Shemia Fagan, Secretary of State