

Senate Bill 578

Sponsored by Senator DEMBROW, Representatives WILDE, PRUSAK (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires court, under certain circumstances, to appoint legal counsel for respondent or protected person in protective proceeding. Requires payment for appointed counsel from guardianship or conservatorship estate of respondent or protected person or at state expense. Provides for phase-in among counties over three-year period beginning in 2022. Directs certain county circuit courts to make annual reports regarding protective proceeding statistics to Judicial Department. Directs Judicial Department to present results of reports in report to interim committees of Legislative Assembly related to judiciary. Sunsets reporting requirement on January 2, 2025.

A BILL FOR AN ACT

1
2 Relating to appointment of legal counsel for certain persons in protective proceedings; creating new
3 provisions; and amending ORS 125.080.

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

5 **SECTION 1.** ORS 125.080 is amended to read:

6 125.080. (1) The court may require that a hearing be held on any petition or motion in a pro-
7 tective proceeding.

8 (2) A hearing must be held on a petition or motion if [*an*] **the respondent or protected person**
9 **makes or files an** objection [*is filed*] to the petition or motion and the objection is not withdrawn
10 before the time scheduled for the hearing.

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

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

13 (5)(a) If the court requires that a hearing be held [*on a petition,*] or a hearing is otherwise re-
14 quired under this section, the court [*may*] **shall** appoint counsel for the respondent [*unless the re-*
15 *spondent is already represented by counsel.*] **or protected person when:**

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

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

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

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

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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

6 **SECTION 2.** (1) Each county circuit court shall report to the Judicial Department, in
7 accordance with rules adopted by the department, statistics concerning protective pro-
8 ceedings in the county during the prior two calendar years, including:

9 (a) The number of protective proceedings initiated;

10 (b) The number of guardianships granted;

11 (c) The number of guardianships denied;

12 (d) The number of alternatives to guardianships granted;

13 (e) The number of guardianships terminated or limited;

14 (f) The number of respondents or protected persons for whom the court appointed
15 counsel under ORS 125.080; and

16 (g) The aggregate number of hours counsel spent representing respondents or protected
17 persons.

18 (2) The reports required by this section shall be due annually no later than July 1.

19 **SECTION 3.** The Judicial Department shall present the results of the county reports
20 under section 2 of this 2021 Act in a report to the interim committees of the Legislative
21 Assembly related to the judiciary no later than September 15, 2024.

22 **SECTION 4.** Section 2 of this 2021 Act is repealed on January 2, 2025.

23 **SECTION 5.** Section 2 of this 2021 Act applies only to:

24 (1) The circuit courts of Multnomah County and Lane County on or after January 2, 2023;
25 and

26 (2) The circuit courts of Columbia County on or after January 2, 2024.

27 **SECTION 6.** The amendments to ORS 125.080 by section 1 of this 2019 Act apply only to:

28 (1) Hearings taking place in Multnomah County and Lane County on or after January 2,
29 2022;

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

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

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