

Enrolled
Senate Bill 590

Sponsored by COMMITTEE ON HUMAN SERVICES AND EARLY CHILDHOOD

CHAPTER

AN ACT

Relating to appointment of court visitors for minor respondents in guardianship proceedings; amending ORS 125.055 and 125.150.

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

SECTION 1. 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), or as an adult; or

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

(b) 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 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 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 information the

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 2. 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 nominated person to the respondent.

(d) A statement as to whether the person nominated to be fiduciary has been convicted of a crime, has filed for or received protection under the bankruptcy laws or has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation. If the nominated person has been convicted of a crime, filed for or received protection under bankruptcy laws or had a professional or occupational license revoked or canceled, the petition shall contain a statement of the circumstances surrounding those events. If the person nominated is not the petitioner, the statement must indicate that the person nominated is willing and able to serve.

(e) 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.

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

(g) The factual information that supports the request for the appointment of a fiduciary or entry of other protective order, 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.

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

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

(j) 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.

(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) 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) 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.

(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 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.

(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.

Passed by Senate March 4, 2015

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 19, 2015

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Tina Kotek, Speaker of House

Received by Governor:

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Approved:

.....M.,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State