

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 503**

1 On page 1 of the printed bill, line 2, delete “, 125.160”.

2 Delete lines 4 through 29 and delete pages 2 through 5 and insert:

3 **“SECTION 1.** ORS 125.165 is amended to read:

4 “125.165. (1) [*A presiding judge shall by court order establish:*]

5 “[*(a) Qualifications for persons serving as visitors for the court, in addition*
6 *to those qualifications established by this section; and*]

7 “[*(b) Standards and procedures to be used by visitors in the performance*
8 *of their duties.*] **The Chief Justice of the Supreme Court shall adopt, by**
9 **rule or order, uniform visitor policies, including standards, protocols**
10 **and procedures to be used by:**

11 **“(a) Visitors in the performance of their duties; and**

12 **“(b) Courts in qualifying and removing court visitors from lists**
13 **compiled and maintained under subsection (4) of this section.**

14 “(2) A visitor may be an employee of the court. The visitor may not have
15 any personal interest in the respondent or protected person, or any pecuniary
16 or financial interest in the proceedings, if those interests could compromise
17 or otherwise affect the decisions of the visitor. A visitor may not receive
18 compensation for services rendered as a fiduciary for two or more protected
19 persons at the same time who are not related to the fiduciary.

20 “(3) A visitor must:

21 “(a) Have the training and expertise adequate to allow the person to

1 conduct the interviews and make the recommendations required under ORS
2 125.150 and 125.155, to communicate with, assess and interact with respond-
3 ents and protected persons, and to perform the other duties required of a
4 visitor; and

5 “(b) Demonstrate sufficient knowledge of the law so as to be able to in-
6 form a respondent or protected person of the nature and effect of a protective
7 proceeding, to inform a respondent or protected person of the rights of the
8 respondent or protected person in the protective proceeding, to answer the
9 questions of a respondent or protected person and to inform fiduciaries con-
10 cerning their powers and duties.

11 **“(4) Each circuit court shall compile and maintain a list of quali-
12 fying visitors that may be used by any other circuit court seeking a
13 qualified visitor.**

14 **“SECTION 2.** ORS 125.150 is amended to read:

15 “125.150. (1)(a) The court shall appoint a visitor upon the filing of a pe-
16 tition in a protective proceeding that seeks the appointment of:

17 “(A) A guardian for an adult respondent;

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

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

25 “(b) The court may appoint a visitor in any other protective proceeding
26 or in a proceeding under ORS 109.329.

27 **“(c) The court may not delegate the responsibility for selecting a
28 visitor to be appointed in a protective proceeding to an attorney, a
29 party to the proceeding or any other person other than court staff.**

30 “(2) A visitor may be an officer, employee or special appointee of the

1 court. The person appointed may not have any personal interest in the pro-
2 ceedings. The person appointed must have training or expertise adequate to
3 allow the person to appropriately evaluate the functional capacity and needs
4 of a respondent or protected person, or each petitioner and the person to be
5 adopted under ORS 109.329. The court shall provide a copy of the petition
6 and other filings in the proceedings that may be of assistance to the visitor.

7 “(3) A visitor appointed by the court under this section shall interview
8 a person nominated or appointed as fiduciary and the respondent or pro-
9 tected person, or each petitioner and the person to be adopted under ORS
10 109.329, personally at the place where the respondent or protected person,
11 or each petitioner or the person to be adopted under ORS 109.329, is located.

12 “(4) Subject to any law relating to confidentiality, the visitor may inter-
13 view any physician or psychologist who has examined the respondent or
14 protected person, or each petitioner under ORS 109.329, the person or officer
15 of the institution having the care, custody or control of the respondent or
16 protected person, or each petitioner under ORS 109.329, and any other person
17 who may have relevant information.

18 “(5) If requested by a visitor under subsection (4) of this section, a phy-
19 sician or psychologist who has examined the respondent or protected person,
20 or each petitioner under ORS 109.329, may, with patient authorization or, in
21 the case of a minor respondent, with the authorization of the minor’s parent
22 or the person having custody of the minor, or in response to a court order
23 in accordance with ORCP 44 or a subpoena under ORCP 55, provide any
24 relevant information the physician or psychologist has regarding the re-
25 spondent or protected person, or each petitioner under ORS 109.329.

26 “(6) A visitor shall determine whether it appears that the respondent or
27 protected person, or each petitioner or the person to be adopted under ORS
28 109.329, is able to attend the hearing and, if able to attend, whether the re-
29 spondent or protected person, or each petitioner or the person to be adopted
30 under ORS 109.329, is willing to attend the hearing.

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

3 “(a) The inability of the respondent to provide for the needs of the re-
4 spondent with respect to physical health, food, clothing and shelter;

5 “(b) The location of the respondent’s residence and the ability of the re-
6 spondent to live in the residence while under guardianship;

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

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

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

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

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

19 “(a) The appointment of a fiduciary; and

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

21 “(9) If a petition is filed seeking the appointment of a conservator in ad-
22 dition to the appointment of a guardian, a visitor shall investigate whether
23 the respondent is financially incapable. The visitor shall interview the per-
24 son nominated to act as conservator and shall interview the respondent
25 personally at the place where the respondent is located.

26 “(10) A visitor shall determine whether the respondent or protected per-
27 son, or each petitioner or the person to be adopted under ORS 109.329, wishes
28 to be represented by counsel and, if so, whether the respondent or protected
29 person, or each petitioner or the person to be adopted under ORS 109.329,
30 has retained counsel and, if not, the name of an attorney the respondent or

1 protected person, or each petitioner or the person to be adopted under ORS
2 109.329, wishes to retain.

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

8 “(12) If the respondent or protected person, or each petitioner or the
9 person to be adopted under ORS 109.329, does not plan to retain counsel and
10 has not requested the appointment of counsel by the court, a visitor shall
11 determine whether the appointment of counsel would help to resolve the
12 matter and whether appointment of counsel is necessary to protect the in-
13 terests of the respondent or protected person, or each petitioner or the per-
14 son to be adopted under ORS 109.329.”

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