

A-Engrossed House Bill 2601

Ordered by the House April 15
Including House Amendments dated April 15

Sponsored by Representative NATHANSON, Senators PROZANSKI, WAGNER, Representative PILUSO; Representatives DOHERTY, GOMBERG, GORSEK, HOLVEY, LIVELY, NOSSE, POWER, PRUSAK, SALINAS, SCHOUTEN, WILDE, WITT, Senators DEMBROW, FREDERICK, GELSER, MANNING JR, MONNES ANDERSON, STEINER HAYWARD, TAYLOR (Presession 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.

Limits guardian's authority to limit protected person's preferred associations with third parties. Permits interested person to move court to review guardian's power to limit protected person's associations **and requires court to conduct hearing. Permits court to remove guardian for unreasonably limiting protected person's associations or failing to perform certain duties.**

Requires guardian to utilize substituted judgment standard for making decisions on behalf of protected person. Permits guardian to utilize best interest standard if guardian is unable to determine protected person's preferences.

A BILL FOR AN ACT

1
2 Relating to guardianships; creating new provisions; and amending ORS 125.080, 125.225, 125.315 and
3 125.325.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 125.**

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

7 (a) "Association" means communication, visitation or other social interaction with third
8 parties; and

9 (b) "Interested person" means a protected person, a person with whom association is
10 being limited, any fiduciary for the protected person or any person who has filed a request
11 for notice in the proceedings.

12 (2) A guardian may not limit a protected person's preferred associations, except:

13 (a) As specifically allowed by the court; or

14 (b) To the extent the guardian determines necessary to avoid unreasonable harm to the
15 protected person's health, safety or well-being.

16 (3) If a protected person is unable to communicate, the protected person's preferred as-
17 sociation shall be presumed based on the prior relationship between the protected person and
18 the person with whom the association is contemplated.

19 (4)(a) If a guardian limits a protected person's association as provided in subsection (2)(b)
20 of this section, an interested person may move the court to modify the guardian's powers
21 with respect to limiting the association.

22 (b) Motions under this subsection must be in writing, except that a protected person may
23 move the court orally in person or by other means that are intended to convey the protected

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 **person's motion to the court. The court shall designate the manner in which an oral motion**
2 **may be made that ensures that a protected person will have the protected person's motion**
3 **presented to the court. The clerk of the court shall provide a means of reducing the oral**
4 **motion to a signed writing for the purpose of filing the motion.**

5 **(c) Any limits on a protected person's associations in effect on the date a motion is filed**
6 **under this subsection remain in effect pending the court's action under paragraph (e) of this**
7 **subsection.**

8 **(d) The court shall schedule the hearing required under ORS 125.080 (3) on a motion un-**
9 **der this subsection no later than 60 days following the date the motion is filed with the court.**
10 **The person making the motion shall give notice to all persons entitled to notice under ORS**
11 **125.060 (3) of the date, time and place of the scheduled hearing at least 15 days before the**
12 **date set for the hearing. Notice shall be given in the manner prescribed by ORS 125.065. The**
13 **court for good cause shown may provide for a different method or time of giving notice under**
14 **this subsection.**

15 **(e) If the court determines that the guardian unreasonably limited association under this**
16 **section, the court may:**

17 **(A) Permit the association, with or without limitations;**

18 **(B) Modify the guardian's powers to limit the protected person's associations;**

19 **(C) Remove the guardian; or**

20 **(D) Award reasonable attorney fees and court costs associated with the motion.**

21 **SECTION 3.** ORS 125.080 is amended to read:

22 125.080. (1) The court may require that a hearing be held on any petition or motion in a pro-
23 tective proceeding.

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

26 **(3) A hearing must be held on a motion to modify a guardian's powers under section 2**
27 **of this 2019 Act.**

28 [(3)] (4) The respondent or protected person may appear at a hearing in person or by counsel.

29 [(4)] (5) If the court requires that a hearing be held on a petition, or a hearing is otherwise re-
30 quired under this section, the court may appoint counsel for the respondent unless the respondent
31 is already represented by counsel.

32 **SECTION 4.** ORS 125.225 is amended to read:

33 125.225. (1) A court shall remove a fiduciary whenever that removal is in the best interests of
34 the protected person.

35 (2) In addition to any other grounds, the court may remove a conservator if the conservator fails
36 to use good business judgment and diligence in the management of the estate under the control of
37 the conservator. The court may apply a higher standard of care to a conservator who claims to have
38 greater than ordinary skill or expertise.

39 **(3) In addition to any other grounds, the court may remove a guardian if the court deter-**
40 **mines the guardian:**

41 **(a) Unreasonably limits the protected person's associations under section 2 of this 2019**
42 **Act;**

43 **(b) Fails to perform the guardian's duties required under ORS 125.315 (1)(g) to (i); or**

44 **(c) [The guardian] Changes the abode of the adult protected person or places the protected**
45 **person in a mental health treatment facility, a nursing home or other residential facility and:**

1 [(a)] (A) Failed to disclose in the petition for appointment that the guardian intended to make
2 the placement; or

3 [(b)] (B) Failed to comply with ORS 125.320 (3) before making the placement.

4 (4) On termination of the authority of a fiduciary, an interim fiduciary may be appointed by the
5 court to serve for a period not to exceed 60 days. An interim fiduciary under this subsection may
6 be appointed by the court without the appointment of a visitor, additional notices or any other ad-
7 ditional procedure, except as may be determined necessary by the court.

8 (5) Upon termination of the authority of a fiduciary, the court may appoint a successor fiduciary.
9 A petition for appointment as successor fiduciary must be filed in the same manner as provided for
10 an original petition, and is subject to all provisions applicable to an original petition for the ap-
11 pointment of a fiduciary. No filing fee shall be charged or collected for the filing of a petition for
12 the appointment of a successor fiduciary.

13 **SECTION 5.** ORS 125.315 is amended to read:

14 125.315. (1) A guardian has the following powers and duties:

15 (a) Except to the extent of any limitation under the order of appointment, the guardian has
16 custody of the protected person and may establish the protected person's place of abode within or
17 without this state.

18 (b) The guardian shall provide for the care, comfort and maintenance of the protected person
19 and, whenever appropriate, shall arrange for training and education of the protected person.
20 Without regard to custodial rights of the protected person, the guardian shall take reasonable care
21 of the person's clothing, furniture and other personal effects unless a conservator has been ap-
22 pointed for the protected person.

23 (c) Subject to the provisions of ORS 127.505 to 127.660 and subsection (3) of this section, the
24 guardian may consent, refuse consent or withhold or withdraw consent to health care, as defined in
25 ORS 127.505, for the protected person. A guardian is not liable solely by reason of consent under
26 this paragraph for any injury to the protected person resulting from the negligence or acts of third
27 persons.

28 (d) The guardian may:

29 (A) Make advance funeral and burial arrangements;

30 (B) Subject to the provisions of ORS 97.130, control the disposition of the remains of the pro-
31 tected person; and

32 (C) Subject to the provisions of ORS 97.965, make an anatomical gift of all or any part of the
33 body of the protected person.

34 (e) The guardian of a minor has the powers and responsibilities of a parent who has legal cus-
35 tody of a child, except that the guardian has no obligation to support the minor beyond the support
36 that can be provided from the estate of the minor, and the guardian is not liable for the torts of the
37 minor. The guardian may consent to the marriage or adoption of a protected person who is a minor.

38 (f) Subject to the provisions of ORS 125.320 (2), the guardian may receive money and personal
39 property deliverable to the protected person and apply the money and property for support, care and
40 education of the protected person. The guardian shall exercise care to conserve any excess for the
41 protected person's needs.

42 **(g) The guardian shall promote the self-determination of the protected person and, to the**
43 **extent practicable, encourage the protected person to participate in decisions, act on the**
44 **protected person's own behalf and develop or regain the capacity to manage the protected**
45 **person's personal affairs. To accomplish the duties under this paragraph, the guardian shall:**

1 (A) Become or remain personally acquainted with the protected person and maintain
2 sufficient contact with the protected person, including through regular visitation, to know
3 the protected person's abilities, limitations, needs, opportunities and physical and mental
4 health;

5 (B) To the extent practicable, identify the values and preferences of the protected person
6 and involve the protected person in decisions affecting the protected person, including deci-
7 sions about the protected person's care, dwelling, activities or social interactions; and

8 (C) Make reasonable efforts to identify and facilitate supportive relationships and ser-
9 vices for the protected person.

10 (h) In making decisions for the protected person, the guardian shall make the decisions
11 the guardian reasonably believes the protected person would make if the protected person
12 were able, unless doing so would unreasonably harm or endanger the welfare or personal or
13 financial interests of the protected person. To determine the decision the protected person
14 would make if able, the guardian shall consider the protected person's previous or current
15 instructions, preferences, opinions, values and actions, to the extent actually known or rea-
16 sonably ascertainable by the guardian.

17 (i) If the guardian cannot make a decision under paragraph (h) of this subsection because
18 the guardian does not know and cannot reasonably determine the decision the protected
19 person would make if able, or the guardian reasonably believes the decision the protected
20 person would make would unreasonably harm or endanger the welfare or personal or finan-
21 cial interests of the protected person, the guardian shall act in accordance with the best in-
22 terest of the protected person. In determining the best interest of the protected person, the
23 guardian shall consider:

24 (A) Information received from professionals and persons that demonstrate sufficient in-
25 terest in the welfare of the protected person;

26 (B) Other information the guardian believes the protected person would consider if the
27 protected person were able; and

28 (C) Other factors a reasonable person in the circumstances of the protected person would
29 consider, including consequences for others.

30 (2) If a conservator has been appointed for the protected person, the guardian may file a motion
31 with the court seeking an order of the court on the duties of the conservator relating to payment
32 of support for the protected person.

33 (3) A guardian may consent to the withholding or withdrawing of artificially administered nu-
34 trition and hydration for a protected person only under the circumstances described in ORS 127.580
35 (1)(a), (b), (d), (e) or (f) and, if the protected person has a medical condition specified in ORS 127.580
36 (1)(b), (d), (e) or (f), the condition has been medically confirmed.

37 **SECTION 6.** ORS 125.325 is amended to read:

38 125.325. Within 30 days after each anniversary of appointment, a guardian for an adult protected
39 person shall file with the court a written report. The report must include a declaration under pen-
40 alty of perjury in the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to
41 194.835, if the declarant is physically outside the boundaries of the United States. Copies of the
42 guardian's report must be given to those persons specified in ORS 125.060 (3). The report shall be
43 in substantially the following form:

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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):

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

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

[14.] **15.** I believe the guardianship should or should not continue because:

[15.] **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: \$_____.

[16.] **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.

[17.] **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): _____.

[18.] **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:

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