

77th OREGON LEGISLATIVE ASSEMBLY--2014 Regular Session

## Enrolled

# House Bill 4114

Sponsored by Representatives GALLEGOS, GILLIAM, Senator MONNES ANDERSON; Representatives BARKER, BARTON, GOMBERG, GORSEK, HOYLE, KENY-GUYER, LININGER, MCKEOWN, TOMEL, VEGA PEDERSON, WHITSETT, WITT, Senators DEMBROW, DEVLIN, JOHNSON (Presession filed.)

CHAPTER .....

AN ACT

Relating to special advocates for protected persons; creating new provisions; amending ORS 125.025; and declaring an emergency.

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

**SECTION 1.** Section 2 of this 2014 Act is added to and made a part of ORS chapter 125.

**SECTION 2.** (1) At any time after a presiding judge issues a court order described in subsection (5) of this section and after the appointment of a fiduciary that is not a financial institution or trust company as defined in ORS 706.008, the court, on its own motion or on the motion of any person who is interested in the affairs or welfare of the protected person, may appoint a volunteer to serve as a protected person special advocate.

(2) The protected person special advocate shall:

(a) Investigate and evaluate the protected person's circumstances to establish whether the fiduciary is fulfilling the fiduciary duties and obligations with which the fiduciary has been charged;

(b) Inform the fiduciary of support services and resources available in the community to assist in the care and welfare of the protected person;

(c) Provide a written report to the court of the findings of the protected person special advocate, in a form approved by the court, and provide copies of the report to all persons entitled to notice under ORS 125.060; and

(d) Perform any other duties, responsibilities or functions as ordered by the court.

(3)(a) A person appointed as a protected person special advocate shall perform the duties, responsibilities and functions of a protected person special advocate as a volunteer and is not entitled to compensation or reimbursement for expenses from the court, the protected person or the protected person's estate.

(b) A person appointed as a protected person special advocate is immune from any liability for acts or omissions or errors in judgment made in good faith in the course or scope of the person's duties, responsibilities and functions as a protected person special advocate.

(4) Subject to any law relating to confidentiality and as specified in the court's order appointing the protected person special advocate, the special advocate may inspect and copy records and information related to the health, mental health, finances, education and welfare of the protected person as is necessary to perform the duties, responsibilities and functions of the special advocate. Records and information inspected and copied by the special advocate

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under this subsection may be disclosed only for the purpose of performing the duties, responsibilities and functions specified in the court's order appointing the special advocate.

(5)(a) Before a court may appoint protected person special advocates, the presiding judge shall by court order establish:

(A) Qualifications for persons serving as protected person special advocates; and

(B) Standards and procedures to be used by protected person special advocates in the performance of their duties, responsibilities and functions.

(b) Protected person special advocates may be employees of the court but may not have any personal interest in the protected person or any pecuniary or financial interest in the proceedings.

**SECTION 3.** ORS 125.025 is amended to read:

125.025. (1) Subject to ORS 125.800 to 125.852 for adults as defined in ORS 125.802, a court having jurisdiction over a protective proceeding shall exercise continuing authority over the proceeding. Subject to the provisions of ORS 125.800 to 125.852 and this chapter, the court may act upon the petition or motion of any person or upon its own authority at any time and in any manner it deems appropriate to determine the condition and welfare of the respondent or protected person and to inquire into the proper performance of the duties of a fiduciary appointed under the provisions of this chapter.

(2) A court having jurisdiction over a protective proceeding in which the respondent or protected person is a minor shall consider and apply all relevant provisions of the Indian Child Welfare Act codified at 25 U.S.C. sections 1901 et seq.

(3) A court having jurisdiction over a protective proceeding may:

(a) Compel the attendance of any person, including respondents, protected persons, fiduciaries and any other person who may have knowledge about the person or estate of a respondent or protected person. The court may require those persons to respond to inquiries and produce documents that are subject to discovery under ORCP 36.

(b) Appoint counsel for a respondent or protected person.

(c) Appoint investigators, visitors and experts to aid the court in the court's investigation.

(d) Exercise jurisdiction over any transaction entered into by a fiduciary to determine if a conflict of interest existed and enter an appropriate judgment with respect to the transaction.

(e) Surcharge a surety for any loss caused by failure of a fiduciary to perform a fiduciary duty or any other duty imposed by this chapter, including a surcharge for attorney fees incurred by a respondent or protected person by reason of the failure.

(f) Require immediate delivery of a protected person or property of the protected person, including records, accounts and documents relating to that property, to the court or to a place it designates.

(g) Require the fiduciary to produce any and all records that might provide information about the treatment or condition of the protected person or property of the protected person.

(h) Remove a fiduciary whenever that removal is in the best interests of the protected person.

(i) Appoint a successor fiduciary when a fiduciary has died, resigned or been removed.

(j) Require a respondent or protected person to submit to a physical or mental examination pursuant to ORCP 44.

(k) Make provisions for parenting time or visitation or order support for any minor who is a respondent or protected person in a protective proceeding.

(L) Impose any conditions and limitations upon the fiduciary that the court considers appropriate, including limitations on the duration of the appointment. Any conditions or limitations imposed on the fiduciary must be reflected in the letters of appointment.

**(m) Appoint protected person special advocates pursuant to section 2 of this 2014 Act.**

(4) When a person files a petition or motion for a support order under subsection (3)(k) of this section:

(a) The person shall state in the petition or motion, to the extent known:



(A) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the minor, including a proceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(B) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the minor.

(b) The person shall include with the petition or motion a certificate regarding any pending support proceeding and any existing support order. The person shall use a certificate that is in a form established by court rule and include information required by court rule and paragraph (a) of this subsection.

(5) When the court acts upon its own authority to order support under subsection (3)(k) of this section, at least 21 days before the hearing the court shall notify the Administrator of the Division of Child Support of the Department of Justice, or the branch office providing support services to the county where the hearing will be held, of the hearing. Before the hearing the administrator shall inform the court, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the minor, including a proceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the minor.

(6) The Judicial Department and the Department of Justice may enter into an agreement regarding how the courts give the notice required under subsection (5) of this section to the Department of Justice and how the Department of Justice gives the information described in subsection (5)(a) and (b) to the courts.

(7) If the court finds that a conservator should be appointed, the court may exercise all the powers over the estate and affairs of the protected person that the protected person could exercise if present and not under disability, except the power to make a will. The court shall exercise those powers for the benefit of the protected person and members of the household of the protected person.

(8) The powers of the court in protective proceedings may be exercised by the court directly or through a fiduciary.

**SECTION 4.** This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect on its passage.

IN THE CIRCUIT COURT IN THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

In the Matter of: ) ORDER No.  
 )  
Appointment of Protected Person Special Advocates )

The Court finds that ORS Chapter 125 now authorizes the appointment of volunteers to serve as Protected Person Special Advocates. This order shall delineate the qualifications, standards and procedures to be used by Protected Person Special Advocates (hereafter Special Advocates) in the performance of their duties, responsibilities and functions. These are as follows:

**Qualifications for persons serving as special advocates:**

- Be 18 or over
- Have no convictions for crimes punishable by one year or more in jail, or any crimes involving abuse, neglect or exploitation of a person
- Have no current investigation or past founded incident from any governmental investigating authority for, abuse, neglect, or exploitation of another person and/or no professional or occupational license revoked or cancelled for disciplinary reasons
- Have a present ability to understand and conform to ethical obligations of confidentiality, objective reporting, and non-discrimination.
- Have a present ability to personally visit the residences of protected people within Multnomah County and nearby areas
- Have no personal interest in the protected person or any pecuniary or financial interest in the proceeding

**Screening and training for special advocates:**

- Complete a volunteer application with accurate identifying information; self-disclosure of criminal convictions, DHS investigations, or professional discipline and personal references
- Submit to a criminal record check and Oregon DHS abuse records check
- Complete at least 10 hours of in-person training covering the law of guardianships, the needs of vulnerable populations, skill development for working with diverse communities and the duties and ethics of a court-appointed Guardianship Monitor
- Complete additional training of no less than four hours each year in subject areas relevant to protected populations or skills for special advocates
- Affirm an understanding of the laws and duties governing the work of a Special Advocate in a swearing-in ceremony or other process designed to actively affirm such an understanding

**Standards and procedures to be used by special advocates:**

Special advocates will:

- Review the existing court file on a matter to which they are appointed

- Contact the fiduciary to arrange for an interview with the fiduciary and a visit to protected person
- Conduct an interview with the fiduciary
- Provide referral to services that can improve the quality of the fiduciary's performance
- Visit the protected person
- If necessary to complete court report, interview the protected person's caregivers and family members and social service providers and inspect records related to health, mental health, finances, education and welfare
- Complete a court-approved written report using a form designated by the Chief Probate Judges which provides a summary of observations and indicates any recommendation for judicial action
- Consult with supervising organization's staff as necessary to complete the required tasks
- Submit the written report to the supervising organization. The supervising organization will ensure report compliance and submit the report to the court

NOW THEREFORE, IT IS ORDERED that the Multnomah County Circuit Court shall appoint Protected Person Special Advocates meeting the above qualifications and training requirements and those Protected Person Special Advocates shall follow the above described standards and procedures in the performance of their duties.

Dated this \_\_\_\_ day of September, 2014.

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Nan Waller  
Presiding Circuit Court Judge

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

Probate Department

In the Matter of the Guardianship of

) Case No.: \_\_\_\_\_  
) PROTECTIVE ORDER  
) APPOINTING  
) SPECIAL ADVOCATE

\_\_\_\_\_  
Protected Person

The Court on its own motion does hereby ORDER:

1. That \_\_\_\_\_ is hereby appointed as the “Special Advocate for Vulnerable Oregonian” (SAVO) in this protective proceeding. The appointment shall continue until further Court Order.
2. That the SAVO shall investigate the current circumstances of the protected person to determine whether there are any unmet needs of the protected person or other issues involving the protected person and the guardianship that should be brought to the attention of the Court.
3. That the SAVO is hereby authorized to visit the protected person in his/her place of abode, consult with the guardian, family members, caregivers, physicians and psychologists who have examined or treated the protected person, and any other persons having information about the protected person’s current situation. The SAVO shall have access to any medical and psychological records and evaluations and any care facility or care provider records. SAVO shall keep all records obtained under this provision confidential and shall not redisclose those records to anyone without further order of the Court.
4. That all persons/entities connected in any way with this guardianship shall cooperate with the SAVO in this information gathering function.
5. That the SAVO shall report to this Court using the form developed for that purpose.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
KATHERINE TENNYSON  
CIRCUIT COURT JUDGE