

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: HB 2309 Extension of Conservatorships Until Age 21

Submitted by: Estate Planning & Administration Section

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1. Does this amend current law or program? Yes.

This would amend ORS Ch. 125

2. PROBLEM PRESENTED (including level of severity):

It has been decades since the voting age and age of majority were reduced from age 21 to age 18. One effect of that change was that conservatorships for minors, which in Oregon extend only to the age of minority, end at age 18. Many estate planning lawyers have had the unhappy experience with the requirement that conservatorship assets be released to the protected person at age 18, before he or she is able to handle the funds responsibly. Lawyers have therefore searched for ways to tie up estates past that age. In a recent informal survey of Oregon estate planning lawyers, 19 out of 20 respondents favored an extension of conservatorships until age 21, with some adding that the age should be 25.

The sums involved can be substantial. Children come into wealth, held in conservatorships, in many ways.

- The most common is to suffer an injury, usually in an automobile accident. The amounts involved in such cases vary greatly from hundreds to millions of dollars. 2007 Oregon Laws chapter 874 authorizes settlement of such claims up to \$25,000 without appointment of a conservator, but that law contains restrictions that make its use impractical.
- Children may inherit wealth with no provisions for a trust, either from grandparents or from parents who die without wills or with life insurance or retirement plans payable to the children as default beneficiaries.
- Parents die as the result of wrongful death. Under ORS 30.030, wrongful-death proceeds will bypass carefully drawn estate plans and go directly to minor children.

In our collective years of experience in preparing wills for clients, we have found very few parents who do not want trusts for children extended at least to age 21, if not longer. In larger estates, parents often want the trusts to extend to age 30 or 35. Most commonly, in making that decision, they think back to their own levels of maturity at age 18 and cringe at the thought of their own children receiving inheritances at such a young age.

Recent scientific research also supports deferring financial management of large sums past age 18. An NIH study showed that the frontal cortex area – which governs judgment, decision-making and impulse control – doesn't fully mature until around age 25.

The legislature has recognized the lack of financial maturity of young adults, in the context of the Uniform Transfers to Minors Act, ORS 126.805 to 126.886. That act extends the termination age of UTMA custodianships until age 21 in many circumstances. In 2001, the statute was amended with the addition of ORS 126.872 to permit extensions of UTMA custodianships to age 25. This reflects the demand among persons making gifts to minor for ways to provide for supervision of the donated assets beyond age 18.

3. SOLUTION:

This bill is based on Colorado and Idaho law. Colorado Revised Statutes § 15-14-431 extends all conservatorships created for minors to age 21. Idaho Code § 15-5-433 permits Idaho courts to extend conservatorships to age 21. The bill adopts the Colorado approach of making 21 the age of termination for all conservatorships.

The bill has no special provision for terminating a conservatorship before age 21 based on the financial capability of an individual protected person. However, ORS 125.090(2)(e) (which becomes ORS 125.090(2)(f) under this bill) already permits a court to terminate protective proceedings when the “best interests of the protected person would be served by termination of the proceedings.” Also, 125.420 permits a conservator to “permit the protected person to retain possession and control of property and funds for living requirements as appropriate to the needs and capabilities of the protected person.” These two sections provide ample ways to permit mature young protected persons to assume control of assets before age 21, where appropriate.

The bill also addresses property or other assets acquired by the protected person after age 18 and before age 21. Typically, these assets would involve the protected person's own earnings and savings. The bill denies the conservator control over those assets.

Finally, the bill provides that creditors of protected persons between ages 18 and 21 have full access under non-conservatorship law to the protected person's earnings and savings not under the conservator's control.

4. PUBLIC POLICY IMPLICATION of this proposed legislative change:

The bill will preserve substantial assets for young adults by keeping them in conservatorships until age 21, giving the owners three more years of financial maturity before having control of the assets.

5. Could the problem be addressed through a NON-LEGISLATIVE SOLUTION, such as administrative rule or education? No.

6. COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL? If so, have you suggested it to the section or group?
No.

7. IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED or interested in this change. Who would support it and who would oppose it?

The main affected groups would be young adults who received property in conservatorships before age 18 and their parents. The parents and the young adults – perhaps in hindsight after the passage of time and experience – are likely to view the bill as beneficial. Some of the young adults may resent the three-year continued restraint on their ability to spend their assets freely.

8. Has this been introduced in a prior session? No.