



HOUSE OF REPRESENTATIVES

Dear Chair Barker and Members of the Committee,

Thank you for considering my comments about HB 2378, an issue that recently had a direct impact on my family. HB 2378 would allow a guardianship to be sought for a minor within 90 days of the individual's 18th birthday. This bill caught my attention because just a few months ago, I went through exactly this process to be granted guardianship of my son who experiences intellectual disability and turned 18 in December. We went through the process described in this bill, with the guardianship being granted prior to his 18th birthday. Because of this, it seems this bill may be unnecessary as current law apparently allows what the bill proposes.

If clarification of this option is needed, I do not oppose the bill. I understand why this option is important. I needed the guardianship to be effective on my son's 18th birthday so that there was no question about my ability to meet my son's medical needs should and emergency arise, and my need to continue to communicate with the school about his education. This need would be even greater for families that have individuals with complex medical needs.

However, the process as it exists needs to be improved. Our experience last fall left me deeply concerned about the lack of protection for my son's interests in the process. Because we were already his parents, we had to physically take him to be served with the papers notifying him of the process. I had the authority to read his rights to him, and if he wished to object to my becoming his guardian, he would have had to rely on me to convey that wish and sign his paperwork. More troubling, because he was a minor, our attorney told us that there was no requirement that a court visitor meet with our son, or with us.

ORS 125.150(5) states that the court shall appoint a court visitor in cases where the petition involves the appointment of a guardian of an adult. However, for petitions for the appointment of a guardian for a minor, the law states that the court may appoint a court visitor. In other words, current law makes the appointment of a court visitor in the kinds of situations address by HB 2378 optional.

My husband and I believed that making such an important decision about our son's rights was monumental. We were surprised that under current law it was so easy. In fact, we thought it was too easy.



We thought it was essential that a neutral third party explain the process to our son, evaluate whether it was appropriate to request a guardianship, to recommend which areas of life the guardianship would cover, and to evaluate my fitness as a guardian, and my husband's fitness as a conservator. As such, we insisted on court visitor and gladly paid the fee. Without the recommendations from a neutral third party, we were unsure how a judge could really consider our son's unique needs and strengths.

I am deeply concerned that current law does not require this important safeguard. If the committee moves forward with this bill, I hope that it will consider statutory changes that ensure the rights and safety of the subject individual are protected.

This would involve the following:

- Ensuring a witness is present when the individual is served with papers notifying him or her of the guardianship and conservatorship petitions
- Ensuring a witness is present when the individual is given the opportunity to object to the guardianship and conservatorship petitions
- Requiring that a court visitor be appointed even when the petition is in regards to a minor child who will turn 18. The court visitor should:
 - Meet with the proposed guardian and/or conservator
 - Meet with the individual, and explain to the individual the process and his rights
 - Ensure the subject individual is aware of his right to express objection to the proposed guardian/conservator
 - Make recommendations to the court about the appropriate scope of the guardianship/conservatorship to be granted

Thank you for considering these recommended improvements to the guardianship process that will ensure the safety, independence, and finances of young Oregonians with intellectual disabilities will be better protected. HB 2378 seems to be the perfect vehicle in which to make these improvements, especially if it is used to highlight the ability to apply for a guardianship prior to an individual reaching the age of majority.

I am happy to answer any questions you may have.

Sincerely,


Sara Gelser