



February 9, 2015

TO: Senator Jeff Barker, Chair  
House Judiciary Committee  
FR: Bob Joondeph, Executive Director  
RE: HB 2361

Disability Rights Oregon is Oregon's federally-funded *Protection and Advocacy* office and "the system described in ORS 192.517 (1)" as referenced in ORS 125.060 and other state statutes. DRO is a 501(c)(3) nonprofit.

DRO supports passage of HB 2361.

One day, in 1990, DRO received an anonymous telephone call from a nurse working on the psychiatric ward of a Portland hospital. She was concerned about a patient who had been admitted to the ward by her husband with strict instructions not to allow the patient to have any visitors or communicate by phone or letter with anyone but him. The husband had presented the hospital with a court order of temporary guardianship giving him the authority to make all medical decisions for his wife. The husband had not been heard from for almost a week.

DRO investigated and found that the husband had obtained the court order without notice to his wife or a hearing. This was done in conformance with then Oregon law. Once she was hospitalized, he had cleaned out their joint banking accounts and left the state. DRO was able to secure the wife's release and brought suit seeking a declaration that the state law that permitted the appointment of a temporary guardian without notice or hearing was unconstitutional. Judge Helen Frye ruled that the statute violated our client's due process rights.

In 1993, the law was amended to require prior notice and opportunity to be heard to and for a person subject to a temporary guardianship. In 1995, the entire guardianship Oregon law was rewritten. Among other things, the rewrite expanded notice requirements as well as the role of the court visitor in order to protect against abuse of the law. It stopped short, however, of requiring mandatory hearings or the right to appointed counsel.

In numerous legislative sessions, DRO joined other advocates in supporting changes that would require hearings with appointed counsel for those subject to guardianships. Not meeting with success, DRO collaborated with the state Long Term Care Ombudsman to suggest a new oversight role for both our agencies in order to add protection against the most significant risks of a person being deprived of their freedom without thorough review.

The result was the 1999 passage of HB 2760 [Oregon Laws Chapter 775] which requires proposed and appointed guardians to notify DRO or the LTCO if s/he intends to place the protected person in a mental health facility, developmental disabilities facility or nursing home. The legislature did not provide any resources for our agencies to conduct this oversight function but it is one we have undertaken for the past sixteen years.

DRO's practice upon receiving court filings is to review them to determine if they appear to be consistent with statutory requirements, if they appear to present cases in which the guardianship process is being used as an alternative to civil commitment or there are other indications that person may need information or assistance. We contact the person to ask if they are aware of the proceeding and have any questions or concerns. If the person voices disagreement with the proceeding or provides information that might benefit the court's decision, we contact that court to alert it of those matters. Occasionally, DRO has accepted appointment to represent an individual when no other alternative for representation have been available and we consider it necessary to achieve a just outcome.

Recently, some circuit courts have been unwilling to allow DRO to provide information or participate in proceedings unless we submit filing fees. This is particularly troubling in that DRO has provided this oversight service for years without cost to the state and requiring DRO to pay fees for individuals who are usually indigent and disabled discourages us from performing the oversight role that the legislature contemplated.

HB 2361, by relieving DRO of the obligation to pay filing fees when acting to assure a proper and informed court guardianship process, will further the state's interest in protecting its vulnerable citizens as well as assuring justice and effectiveness of the court process.

Thank you for this opportunity to testify on this important safeguard for vulnerable Oregonians.