

April 18, 2019

TO: House Majority Leader Jennifer Williamson, Chair
House Committee on Judiciary
FR: Bob Joondeph, Policy Consultant
Jan Friedman, Senior Attorney
RE: Support for SB 376

Disability Rights Oregon (DRO) is the Protection and Advocacy office for Oregon. We have provided legal-based advocacy services to Oregonians with disabilities since 1977. We would like to thank the Senate Judiciary Committee for its consideration of SB 376 and for Senator Dembrow for carrying it to unanimous passage in the Senate.

SB 376 addresses two important concerns in our guardianship laws.

1. Despite robust notice requirements in Oregon law for petitions and motions in guardianship proceedings, there is no requirement that interested parties, including the protected person, be informed of the entry of an Order of Appointment of a guardian, the authority awarded to the guardian by the court or the rights of an adult to appeal or seek termination of the guardianship.
2. ORS 125.325 requires guardians to submit annual reports to the court for oversight purposes. Question #14 in the form report asks the guardian to state if, in the guardian's opinion, the guardianship should continue. The guardian must also supply information to support the continuing need for a guardian. If a guardian reports that guardianship should NOT continue or states insufficient reason for its continuation, there is no requirement that the court make further inquiry into whether the guardianship is necessary.

SB 376 addresses these gaps in the following ways:

1. It includes in ORS Chapter 125 the requirement that the parties listed in ORS 125.060 receive notice (in the manner set forth in that section) of the entry of an Order of Appointment of a guardian, the authority awarded to the guardian, limits to that authority, and the right of the adult to appeal the order - including the right to seek removal of the guardian or termination of the guardianship.
2. It sets out the steps that a court shall take if a guardian reveals in an annual guardianship report that the guardianship is no longer needed, or if a guardian does not provide adequate information to support its continued need. These steps include court notice

to the guardian that more information is needed or that the guardians should file a motion to dissolve the guardianship. If a guardian does not respond to the court, the court may initiate proceedings to remove the guardian.

Key reasons to enact SB 376:

- Guardianship profoundly affects an individual's rights. The process allows a third party to be given authority to make vital life decisions for another adult. The directly-affected adult and those who are closely involved with the adult, should receive basic information explaining the existence and effect of the guardianship.
- The protected person and closely involved parties have a due process interest in being informed of their appeal rights. Letting the protected person and others know that the guardianship may be terminated in certain circumstances assures them that guardianship is not necessarily permanent.
- Guardianship comes with a huge loss of civil liberties and should, therefore, be accorded strenuous Due Process rights.
- DRO has worked with protected persons who feel that they have been imprisoned and never had an opportunity to be heard. Some believe that their guardian has seized control over their lives for their lifetime and nothing can be done about it. Better notice of the existence and effect of the guardianship provides information that can address this sense of helplessness.
- When a guardian sees no need for continuing the guardianship, the court should act to replace the guardian or dissolve the guardianship. Otherwise, a guardianship would be forever, regardless of need.

Thank you for the opportunity to submit this testimony in support of SB 376.