



**TO:** Chair Power, Vice-Chair Wallan, & Members of the House Committee on the Judiciary, Subcommittee on Civil Law  
**FROM:** Disability Rights Oregon  
**DATE:** May 3, 2021  
**RE:** Testimony Supporting SB 190

Dear Chair Power, Vice-Chair Wallan, & Members of the Committee:

Disability Rights Oregon submits this written testimony supporting SB 190. This legislation would clarify how notice is provided to a protected person under Oregon's guardianship laws.

### **ABOUT DISABILITY RIGHTS OREGON**

Since 1977 Disability Rights Oregon has been the State's Protection and Advocacy System.<sup>1</sup> We are authorized by Congress to protect, advocate, and enforce the rights of people with disabilities under the U.S. Constitution and Federal and State laws, investigate abuse and neglect of people with disabilities, and "pursue administrative, legal, and other appropriate remedies".<sup>2</sup> We are also mandated to "educate policymakers" on matters related to people with disabilities.<sup>3</sup>

### **PROBLEM BEING ADDRESSED BY SB 190**

In 2019, SB 376 was enacted into law to require notice to the protected person about entry of an Order of Appointment of a guardian, the authority awarded to the guardian and limits to that authority, and the right of the adult to appeal the order and to seek removal of the guardian or termination of the guardianship. We want to thank Chair Power, Vice-Chair Wallan, and Rep. Helm for your support of SB 376 in the 2019 session.

The unfinished business of SB 376 is clarifying the manner in which notice should be provided, especially as it relates to protected persons with with limited literacy or a disability that requires accommodations or different communication approaches.

### **SB 190 WILL CLARIFY NOTICE REQUIREMENTS IN ORS 125.082**

SB 190 would clarify notice requirements in the following ways:

- Require written notice be provided in person. This requirement will ensure the protected person actually receives the notice rather than being lost in the mail, misplaced by caregivers, or withheld for nefarious reasons.

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<sup>1</sup> See ORS 192.517.

<sup>2</sup> See 42 U.S.C. § 15041 et seq; 42 U.S.C. § 10801 et seq.

<sup>3</sup> See 42 U.S. Code § 15043(a)(2)(L).

- Requires the notice be provided in a manner “reasonably calculated to be understood.” This requirement ensures the form of notice can be understood by the protected person. This may require the notice be provided in large print for a person who is low vision, described using simplified English for a person with limited vocabulary, or in another format that will allow the protected person to understand the notice.
- Requires the guardian to offer, and to provide when requested, oral notice to the protected person. For people with limited literacy, oral notice will allow for the protected person to better understand the meaning of the notice.
- When needed, requires the guardian to provide reasonable accommodations for effective communication. This is consistent with what is required under the Americans with Disabilities Act.

SB 190 acknowledges that under certain circumstances in-person notice may not be possible. In these cases, SB 190 allows for the notice required by ORS 128.082 may be provided by mail so long as the guardian states why personal delivery of the notice was unduly burdensome.

#### **SB 190 CLEARLY DESCRIBES HOW TO DEMONSTRATE COMPLIANCE**

ORS 192.082 (3) requires proof of notice be filed in the protective proceeding not later than 30 days after the guardian’s appointment. In general, this is a brief filing with the Court. The filing includes:

- Date, time, and place where written notice was provided.
- A description of the manner the notice was provided, whether notice was provided orally, and whether any reasonable accommodation was provided.
- If in-person notice was not possible and notice was instead provided by mail, a certified copy of the return receipt and a brief description of why personal delivery of the notice was unduly burdensome.

SB 190 clarifies how proof of compliance with SB 190 is achieved.

#### **SB 190 REDUCES ADMINISTRATIVE BURDEN**

As the Statewide Protection and Advocacy System, under ORS 125.060, Disability Rights Oregon receives service in approximately 300 guardianship cases per month. Notice to the Statewide Protection and Advocacy System is required when the protected person is a resident of a mental health treatment facility or a residential facility for individuals with

developmental disabilities, or if the guardian intends to place the protected person in such a facility. Most of these filings come through the U.S. Postal Service. There are two problems we seek to address:

1. During COVID-19, mail processing delays have greatly delayed review of these filings.
2. An increased number of filings over the past four years have placed a substantial administrative burden on Disability Rights Oregon without providing any funding by the State.

To ease the administrative burden, SB 190 would amend ORS 125.082 (3) (d) to allow Disability Rights Oregon to establish an electronic system to receive service required under ORS 125.060.

While this would ease administrative burden, the task of reviewing these filings would remain unfunded—something we hope to address with the legislature later.

#### **SUPPORT FOR SB 190**

Disability Rights Oregon urges the Committee to move SB 190 to the floor with a Do-Pass recommendation.