



February 23, 2021

TO: Senator Floyd Prozanski, Chair and
Members of the Senate Committee on Judiciary
FR: Jan Friedman, Senior Staff Attorney with Disability Rights Oregon
RE: Support for SB 578 (and for SB 202)

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.

DRO recognizes that Court-Appointed Attorneys are essential for respondents (persons who are subject to a guardianship petition) and for protected persons (persons who have a court appointed guardian) in guardianship proceedings given the serious infringement of civil liberties that guardianship creates. Under Oregon guardianship law, a person has a right to an attorney, but not to a Court Appointed Attorney. If a person cannot afford an attorney; they are oftentimes denied legal representation.

DRO hears from protected persons who are concerned that they cannot make a multitude of choices including but not limited to: where to live, when to wake up, what music to listen to, whether to go to college or get a job, whether they can walk out the door, whether they can get together with friends, whether they get certain desired medical treatment, whether they can keep their family home, whether they are moved from their home town. Decisions range from seemingly small to life or death. All affect a person's sense of well-being and dignity.

Court-Appointed Attorneys impact all aspects of Due Process in guardianship proceedings. Currently, when a person objects and has a right to a hearing, but has no legal representation, the hearing becomes not only intimidating, but not fair. It's an unreasonable task to show a Judge at hearing that one's "not incapacitated", for example. Given that most Oregon guardianships are full—meaning that guardians are authorized to make decisions about all the most important aspects of a protected person's life—the stakes are tremendously high. The seriousness is compounded because time-frame for guardianships is the protected person's life.

Respondents in guardianship proceedings are accorded a minimal amount of due process. The respondent receives personal service of the guardianship petition, a Court Visitor speaks with the respondent, and then if the respondent has no objection registered with the Court, the respondent is Court Ordered to have a guardian. There is no mandatory hearing. There is no Court Appointed Attorney to speak with the respondent about their rights or to represent them at hearing.

By creating a pilot program that allows Court Appointed Attorneys in guardianship proceedings, SB 578 addresses a major civil rights and due process concern for respondents as well as for protected persons. Respondents and protected persons would be treated much more fairly having the option for Court Appointed Attorneys in guardianship proceedings. Allegedly mentally ill persons are given a court appointed attorney in civil commitment matters where 180 days is the maximum time period. Likewise, people charged with crimes who may have a maximum sentence of 30 days are allowed Court Appointed Attorneys. Respondents and protected persons' loss of civil liberties is akin to being civilly imprisoned for life.

Key reasons to enact SB 578:

- Guardianship profoundly affects an individual's rights. Guardianship allows a third party to be given authority to make vital life decisions for another adult. The directly-affected adult should have due process commensurate with their level of loss of civil liberties.
- Without Court Appointed Attorneys, there are protected persons who feel that they have been essentially 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. Court Appointed Attorneys could provide better information about rights under guardianship and help alleviate this sense of helplessness.
- Respondents and protected persons may have their rights overly restricted under guardianship when there was no Court Appointed Attorney to represent them in the guardianship proceedings. Protected persons may be denied the ability to live their lives in any way they would choose. They may suffer a long-term loss of independence and self-reliance and, ultimately, hope and dignity.

Thank you for the opportunity to submit this testimony in support of SB 578.