



**DEPARTMENT OF JUSTICE**  
OFFICE OF THE ATTORNEY GENERAL

DATE: March 12, 2019  
TO: Honorable Floyd Prozanski, Chair of the Senate Judiciary Committee  
FROM: Kate Denison, Policy Analyst  
SUBJECT: SB 783: Attorney General Notice of Elder Abuse Proceedings

This testimony is presented in support of SB 783.

**Background:**

ORS 124.100(6) provides that a person commencing a civil action for the abuse of a vulnerable person must serve a copy of their complaint on the Attorney General within 30 days after the action is commenced. Unfortunately, this statutory language is located in a section of the Chapter that many lawyers overlook – the definitions section. The purpose of the notice provision is to allow the Attorney General to intervene in cases of general public importance. The notice provision was *not* intended to prevent vulnerable plaintiffs from proceeding with a meritorious case if the plaintiff fails to timely notify the Attorney General of the action.

In 2016 in *Bishop v. Waters*, 280 Or App 537, 380 P.3d 1114 (Or App, 2016), the Court of Appeals held that the trial court must dismiss a vulnerable person's claim if the plaintiff failed to comply with the notice requirement. In other words, the failure to timely give notice is a jurisdictional defect. Defendants are now using the failure to provide notice to have meritorious suits thrown out, delaying justice or in cases in which the statute of limitations has expired, potentially denying abused vulnerable persons any justice at all. It is important to encourage vulnerable persons to bring actions for financial or physical abuse. Defendants should not be allowed to delay, dismiss or run up costs on these egregious cases based on the technical requirement to give the Attorney General notice.

**Concept:**

This bill modifies the requirement to notify the Attorney General of an elder abuse proceeding by making it clear that failure to do so is not a jurisdictional defect, but a procedural one that can be cured prior to the entry of a judgment.

**Contact:** Kate Denison, Policy Analyst, [kate.e.denison@doj.state.or.us](mailto:kate.e.denison@doj.state.or.us) or (971) 599-9851