



May 5, 2021

TO: House Committee on the Judiciary House Subcommittee On Civil Law  
FR: Jan Friedman, Senior Staff Attorney with Disability Rights Oregon  
RE: Request support for SB 578

I submit this testimony on behalf of Disability Rights Oregon (DRO), the Protection and Advocacy law agency for people with disabilities in Oregon. We have provided legal-based advocacy services to Oregonians with disabilities since 1977. Given the huge infringement on civil liberties, DRO has consistently maintained guardianship reform as one of our Goals and Priorities. DRO provides client-directed advocacy and in guardianship matters, represents the respondent (persons who are subject to a guardianship petition) or the protected person (person who is under guardianship).

The right to a court-appointed attorney is important for guardianship reform. Under current 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 oftentimes are denied legal representation. Please support SB 578 as it is a clear step towards allowing the huge level of civil liberties infringement in guardianship to be met with a commensurate high level of Due Process.

DRO advocates for respondents and protected persons throughout the state who express serious concerns about their rights being infringed due to guardianship. DRO has limited resources with only 8 attorneys to provide protection and advocacy legal services for people with disabilities in guardianship as well as in many others including housing, education, employment, healthcare, recreation, law enforcement, criminal justice as is described on our *website at [www.droregon.org](http://www.droregon.org)*.

Briefly, my background is that I have been an attorney for 31+ years, with the past more than 21+ years with Disability Rights Oregon and the prior 10 as a Public Defender and as a sole practitioner in Columbia County. I received my B.A. from Oberlin College with a double degree in Biology & Sociology/ Anthropology and my J.D. from Northeastern University School of Law.

Guardianship is huge civil rights issue, and some of my clients who are protected persons feel imprisoned while not having done anything wrong and not having any trial. Guardianship lasts for life. My clients mourn their loss of self-determination, their loss of ability to decide where they live, when they get up in the morning, what they eat, whether they walk outside or not, whether they can go to school or get a job, whether they can be friends with people they choose. When guardians do not allow protected persons to voice their personal values and choices, the protected persons are apt to lead empty and hopeless lives without dignity.

The heart of Oregon guardianship laws states that a guardian shall maximize independence and self-reliance of the protected person as well as that a protected person "retains all civil rights"—but oftentimes this does not happen.

Disability Rights Oregon rarely hears from respondents or protected persons expressing their gratitude for guardianship. However, we recognize and laud those guardians who work to support their protected persons in manners that enhance self-determination and human dignity.

DRO has worked to represent and advocate for persons under guardianship including:

- Represent persons including those who object to having a guardian to those who are wanting their rights restored through guardianship termination;
- Monitor through following up on guardianship pleadings received by DRO;
- Intervene as the Protection & Advocacy agency;
- Train/ Present on rights under guardianship to State, County, patients, Non-profit organizations, residential providers and attorneys;
- Educate through co-drafting and distributing DRO's Guardianship Handbook, Know Your Rights brochures, fact sheets, articles in the Oregon State Bar Elder Law Section newsletter;
- Participate as a member of collaborative groups including WINGS (Working Interdisciplinary Network of Guardian Services, Member); Oregon Office of Long Term Care Ombudsman (Board Member); Portland Police Bureau Behavioral Health Unity Advisory Committee (Member);
- Participated as a Member of past Governor's Task Forces on Public Guardian Task Force as well as Mental Health Alliance Work Group
- Promote and support guardian reform legislation, such as SB 578: DRO has supported guardianship reform legislation efforts throughout its 40+ year history.

In our representation of and advocacy for respondents and protected persons, it has become clear that these people do not have a platform for their Voice and that they absolutely need court-appointed attorneys to represent them in court. Otherwise, people experience civil imprisonment without any actual Due Process, without a meaningful hearing. Every aspect of a protected person's day may be negatively altered due to lack of self-determination.

Respondents in guardianship proceedings are accorded a minimal amount of Due Process. Here are the steps for a person/ respondent under a guardianship petition:

1. Person is served a copy of the guardianship petition;
2. Court Visitor speaks with the respondent, including about whether they object at that particular point in time;
3. If the respondent has no objection registered with the Court, the respondent is Court Ordered to have a guardian for life.

A person may lose their authority to make decisions about the most important aspects of their life—where to live, what health care to accept, etc.—for life and there is no mandatory hearing and no mandatory court-appointed attorney. Therefore, in this entire process the respondent will likely not speak with any person who can explain or advocate for their rights.

Once a protected person, there are many junctures where a person requires a court-appointed attorney, including but not limited to:

- Objecting to being moved to a different residence (e.g., DRO represented clients who objected to moving to more restrictions and away from family/ friends);
- Objecting to sale of a family home (e.g., DRO represented clients who wanted to maintain their family home as it represented stability);
- Objecting to medical decisions (e.g., DRO represented a protected person to ensure that she was not denied a lifesaving blood transfusion that guardian refused to authorize, DRO represented a protected person to ensure that he could get the Covid-19 vaccine, etc.) and/ or;
- Objecting to the guardianship continuing—requesting guardianship termination (e.g., DRO has represented protected persons who were able to make all decisions on own).

Here are some key reasons to enact SB 578, including ensuring that the pilot program is funded:

- Guardianship profoundly affects an individual's rights. Guardianships allow a third party to be given authority to make vital life decisions for another adult and this authority lasts for the protected person's entire lifetime. The directly affected adult should have due process commensurate with their level of loss of civil liberties.
- Without court-appointed attorneys, respondents may become protected persons even if it's not necessary for them to have someone else making decisions for them. This is a huge loss of human will and dignity. DRO has

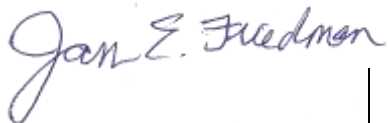
intervened on behalf of respondents in many instances where the guardianship petition has been withdrawn.

- Protected persons may have no recourse in terms of objecting to a residence that they do not want to call home; objecting to abhorrent health care services; objecting to being placed in Hospice; or generally bringing their matter to the attention of the Judge for their guardian failing to uphold their right to have maximum independence and self-reliance.
- Respondents and protected persons have no real Due Process and 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 suffer a long-term loss of independence and self-reliance and, ultimately, hope and dignity.

Please see my attached examples of people that DRO has advocated for with concerns that court-appointed attorneys benefit.

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

Sincerely,



Jan E. Friedman  
Senior Staff Attorney

Phone: (503) 243-2081

Fax: (503) 243-1738

Email: [jfriedman@droregon.org](mailto:jfriedman@droregon.org)



**Disability Rights Oregon's Examples of People  
Needing Court Appointed Attorneys**

*This is a small sampling of people who benefit from being represented in guardianship court.*

How much is it worth for you or a person close to you to be able to make decisions, act on preferences and values and lead their life with dignity and self-determination? Consider all of the decisions that many protected persons are not allowed to make—When to get up, where to live, what to eat, whether they can get a job or an education, whether they can step outside, who they can be friends with. In many instances, the person does not need another person to make their decisions but instead only need some support or no support.

SB 578 sets up a thought out Pilot program with 3 counties offering court-appointed attorneys in guardianship programs. This is critical. Self-determination and dignity are priceless.

*To protect confidentiality of our clients, the names, gender identities, and some facts for the following people have been changed. We believe that there are many additional people who would reach out to access court appointed attorneys if they were a known and actual resource.*

My format is:

1. A little background about the person;
2. How person is involved in guardianship proceedings; and
3. Why a court-appointed attorney is critical

**A. Example People Under Guardianship Petitions (Respondents):**

**Bob:**

1. 42 years old and has some serious health concerns, including morbid obesity. Bob had years of work experience, including as a journalist. Bob's family—possibly to get Bob to manage his health better—had threatened to file for guardianship for years.
2. Eventually, Bob's family petitioned to be Bob's guardian; Bob adamantly objected to having a guardian but did not have funds to retain an attorney. Bob contacted DRO and DRO supported Bob in understanding his rights. Bob understandably had a lot of anxiety regarding representing himself against his family and the dire consequences of

losing his independence. In the end the Judge determined that Bob was not incapacitated and did not authorize a guardian.

3. Bob would have been much benefited by a court-appointed attorney which may likely have saved Bob a lot of emotional strife, the Court's time, as well as family discord. Additionally, this likely would have saved the family money spent on attorney's fees.

**Lucy:**

1. 27 years old with limited communication and can express her preferences, including enjoying her place of residence. Lucy had been living in a group home for people with developmental disabilities for the past 5 years. Lucy's family had controversy with the group home staff. Lucy's family has been the named perpetrator and Lucy the named victim in a substantiated investigation from when Lucy was a juvenile.
2. Lucy's family petitioned for guardianship and threatened to take Lucy away from her residence and out of developmental disability services. DRO intervened as the Protection and Advocacy agency. The Judge dismissed the guardianship petition because the respondent was not in serious harm's way with the support around her.
3. Lucy (and others in this situation) needed a court-appointed attorney—in this instance it appeared that Lucy would be subject to further neglect, not protection, if placed under guardianship. Further Lucy may have been moved from the residence she desired.

**Susan**

1. 62 years old and was hospitalized due to a stroke. Susan recovered gradually and felt fatigued and somewhat overwhelmed for a while. Given her present state, Susan mostly watched TV and met with hospital personnel and some visitors.
2. A woman (Court Visitor) stopped by to meet with Susan; Susan had little energy at the time. However, within several weeks, Susan felt better. Susan noticed that there was paperwork pertaining to guardianship on her bedside table. The date had passed for objecting to the guardianship. Susan knew she did not want a guardian. Susan contacted DRO and DRO was able to preserve her objection, given good cause shown for exceeding the 15-day time limit. DRO requested a court-appointed attorney which was granted.
3. A court-appointed attorney at the outset likely would have prevented Susan from finding out about the guardianship proceeding in such an unpleasant and stressful manner. Additionally, DRO happened to intervene. If not, it's likely that Susan would have had a guardian authorized for life. This huge deprivation of liberty warrants a court-appointed attorney.

**Donna**

1. 72 year old and a patient in the Oregon State Hospital (OSH). Her trials on medications had proven unsuccessful in treating her depression and OSH staff had considered Electro-Convulsive Therapy (ECT). Donna has tried ECT in the past and found it to be harmful.
2. DRO intervened to request that the guardianship petition be dismissed, and that Donna be allowed to participate in the medication hearings afforded to patients in the OSH. The guardianship petition was withdrawn.
3. Donna needed a court-appointed attorney to advocate for no guardianship but instead being allowed to partake in an OSH Due Process procedure in place for involuntary medications.

**Larry**

1. 38 years old and had a chronic serious mental illness that was well managed. He recently received a large, unexpected inheritance from a member of his Church.
2. Larry's brother petitioned for guardianship and conservatorship over Larry. Larry objected to having a fiduciary and was not incapacitated.
3. Larry needed a court-appointed attorney to object to the guardianship petition and to refer him to an attorney who could set up a Special Needs Trust. Larry and others in this situation should not potentially lose their civil liberties due to a complex and confusing court process that they are left to navigate without a court-appointed attorney. Larry did not need anyone but himself to be a primary decision maker. (DRO was able to represent Larry so that the guardianship petition was dismissed.)

**Julie**

1. 19 years' old that was subject to juvenile dependency proceedings. She did not want to continue having others make her decisions and was now an adult.
2. Julie lived in a rural county. She objected to the guardianship by turning in the blue objection form to the Probate Court. However, her matter was not set down for hearing but instead was set for a conference meeting as if she was still under juvenile dependency proceedings. The informal group discussion was far afield from the hearing on her guardianship objection. DRO advocated for a guardianship hearing being set.
3. A court-appointed attorney for Julie would ensure that her Due Process rights are upheld and request that the Judge set the guardianship matter down for hearing. Further, a court-appointed attorney could represent Julie at that hearing.

**Harry**

1. 54 years old was found cyanotic under the Burnside Bridge. He was taken to the hospital psychiatric ward. Harry knew he needed some assistance—as he was found nearly dead.
2. A guardianship petition was filed over Harry. Harry was concerned about someone taking over all of his preferences and choices and values.
3. A court-appointed attorney can structure the limited guardianship judgment to make it clear that the Respondent's personal values and expressed desires are important. For example, language can be used such as, "the guardian at all times shall act in the protected person's best interest and exercise reasonable care, diligence and prudence. In determining the best interest of the protected person, *the guardian shall consider the protected person's personal values and expressed desires.*" It can make a huge difference for Respondents who become Protected People to recognize that their fiduciary should be listening to them in terms of their values and desires. The tone may be set at the time of this initial guardianship proceeding—which in the vast majority of Oregon guardianship matters does not occur at all. Harry attended his hearing with a DRO attorney and appreciated the emphasis on his personal values and expressed desires in the "Limited Judgment".

**Zoey**

1. 30 years old with a mild intellectual disability. She had been living with her parents her entire life. Zoey's mother had continued to treat Zoey as a child without allowing Zoey to act as an adult. Zoey has been working for the City as a custodian's assistant for 10 years.
2. Zoey's mother petitioned to be her guardian. This is not an unusual situation and is one in which the Respondent (Zoey) should be given a court-appointed attorney.
3. Zoey believed she could not disobey their parent. Zoey needed a court-appointed attorney to understand her legal rights and options.

***B. Examples of People Who Have a Guardian (Protected Persons):***

**Eileen**

1. Eileen was 25 years old and had been a protected person since she was 18 years old. She lived in a group home for people with developmental disabilities and was restricted from leaving going outdoors aside from a very short period of time under line of sight supervision. Further, she was not able to get a job, pursue an education, or contact friends or do much of anything autonomously. Eileen reached out and DRO was able to represent her.



2. After meeting with Eileen and understanding her abilities, DRO moved to have Eileen's guardianship terminated. After negotiations with the guardian and their attorney, the Judge signed a stipulated guardianship termination. Post guardianship termination, Eileen found an apartment, secured a near full-time job, met with friends, joined a health club, and considered taking a community college class.
3. A court-appointed attorney was needed. Eileen languished for years under a guardianship that was akin to a civil imprisonment and was unnecessary. Eileen's life was overly restricted for many years.

**Bill:**

1. Bill is 28 years old and had lived in a group home for his entire adult life. Prior to this, he was part of the foster care system. Bill was satisfied with his residence, was healthy overall and had worked at a plant nursery for the past 8 years. Bill found that his guardian had no present function.
2. DRO moved for guardianship termination and was able to negotiate a stipulated guardianship termination with the guardian. The Probate Judge authorized guardianship termination.
3. Given that this protected person has right to terminate guardianship, there should be a court-appointed attorney to assess the merits of proceeding and allowing the protected person to terminate an unnecessary guardianship.

**Sarah:**

1. 76 years old and had raised her 5 children in the home she resided in.
2. Sarah was under guardianship and her guardian moved to sell her family home (and move Sarah into an assisted care facility). Sarah objected. DRO represented Sarah who knew that her home meant stability to her but would have had a very difficult time going to Court alone. The Judge agreed with Sarah that her home should not be sold.
3. A court-appointed attorney was key in that Sarah 100% knew that she wanted to stay in her home and was a very shy and retiring person who had a challenge being in Court with a court-appointed attorney. This was a critical win for Sarah and her sense of well-being, choice and dignity.

**Don:**

1. 48 years old and embroiled in a divorce with 1 child with his wife. He had some difficulty with high anxiety and with organization. His soon to be ex-spouse petitioned for him to have a professional guardian. His divorce as well as his guardianship issues created a lot of stress in Don's life. Don did not feel he needed a guardian; he had no court-

appointed attorney for the guardianship and did not realize that he could object to the guardianship. He did not realize he had the right to a hearing. The uncontested guardianship went into place.

2. Don repeatedly expressed that the guardianship felt like he had been imprisoned for life as if he had committed a heinous crime, except that he was not charged with a crime and he was given no Due Process rights. Unlike if Don had been charged with a crime, Don was not given a court-appointed attorney and had no evidentiary hearing. Don missed his opportunity to testify, to call witnesses, to cross examine witnesses and to have the Judge determine whether he was incapacitated. In his heart, Don felt that the fact that his guardian had authority to make decisions for him was incredibly wrong.
3. If Don had a court-appointed attorney, Don would have been provided his Due Process rights and have likely gone to a hearing. Similarly, he would have understood the role of his Guardian. He likely would have had the benefit of being represented by counsel at a fact-finding hearing. Whatever the result of his hearing, Don likely would have experienced lessened anxiety, disdain, and indignity from being under guardianship. (Don ultimately was able to get a family member to substitute in as his guardian but only with the assistance of DRO.)

**Esther:**

1. 38 years old. Esther had adult onset of blindness from a rare genetic disease. Corresponding with her loss of sight, Esther began to use methamphetamine.
2. Esther's family petitioned to be and became her guardian. DRO was able to assist Esther in accessing a rigorous skills training residential program with Oregon Commission for the Blind. Upon completion of this program, DRO moved to have Esther's guardianship terminated. After many witnesses and a full trial, the Judge terminated Esther's guardianship and restored her rights.
3. A court-appointed attorney is needed to understand the complexities of an evidentiary civil trial in a contested guardianship matter, including preparing multiple witnesses.