



TO: Chair Prozanski, Vice-Chair Thatcher, & Members of the Senate
Committee on the Judiciary
FROM: Disability Rights Oregon
DATE: February 23, 2021
RE: Testimony Supporting SB 190

Dear Chair Prozanski, Vice-Chair Thatcher, & Members of the Committee:

We thank the Committee for introducing this bill on behalf of Disability Rights Oregon.

Disability Rights Oregon submits this written testimony supporting SB 190 to supplement the oral testimony of Jan Friedman. 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.¹ 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".² We are also mandated to "educate policymakers" on matters related to people with disabilities.³

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 Prozanski, Vice-Chair Thatcher, Sen. Gelser, Sen. Linthicum, Sen. Manning, and Sen. Dembrow 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 the gamut of protected persons some of whom have 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:

¹ See ORS 192.517.

² See 42 U.S.C. § 15041 et seq; 42 U.S.C. § 10801 et seq.

³ See 42 U.S. Code § 15043(a)(2)(L).

- 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.
- 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 125.082 may be provided by mail so long as the guardian states why personal delivery of the notice was unduly burdensome.

PROPOSED AMENDMENTS

Disability Rights Oregon would recommend two amendments to SB 190. A brief rationale and proposed language is listed below.

1. Further Clarify How Proof of Compliance with SB 190 will be Achieved: We want to thank Sen. Gelser for the excellent questions she raised regarding how a guardian would demonstrate compliance with the requirements of SB 190. As always, we are grateful for Sen. Gelser’s thoughtful consideration of the on-the-ground impact of legislation and her expertise on disability rights.

ORS 125.082 (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. We recommend the following amendment to clarify what should be required in this filing to comply with SB 190.

Amend ORS 125.082 (3) to add subparagraph (b). ORS 125 would read as follows:

(3)(a) Proof of the giving of notice under this section must be filed in the protective proceeding not later than 30 days following the date of the guardian's appointment.

(b) Proof under this subsection shall include:

(A) The date, time, and place where written notice was provided under paragraph (a) of subsection (1);

(B) A description of the manner the notice was provided, whether notice was provided orally, and whether any reasonable accommodation was provided under paragraph (b) of subsection (1);

(C) If notice was provided pursuant to paragraph (c) of subsection (1), a certified copy of the return receipt and a brief description of why personal delivery of the notice was unduly burdensome.

Proposed subparagraph (b) makes clear how a guardian should demonstrate compliance with the requirements of SB 190.

2. Reducing Administrative Burden: As the Statewide Protection and Advocacy System, under ORS 125.060 Disability Rights Oregon receives service in approximately 110 guardianship cases per month. Most of these filings come through the U.S. Postal Service. There are two problems we seek to address. First, during COVID-19, mail processing delays have greatly delayed review of these filings. Second, an increased number of filings over the past four years have placed a substantial administrative burden on Disability Rights Oregon.

To ease the administrative burden, Disability Rights Oregon has requested the following be added to the end of SB 190:

(4) Service provided under ORS 125.060 to the system described in ORS 192.517 shall be provided electronically, except in the case of pro se filings, in a manner prescribed by the system.

Proposed subsection (4) will allow Disability Rights Oregon to establish an electronic system to receive service required under ORS 125.060.

SUPPORT FOR SB 190

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