



# Disability Rights Oregon

TO: Senate Committee on the Judiciary  
FROM: Disability Rights Oregon  
DATE: March 23, 2023  
RE: SB 380-1 [Related to People Under Aid & Assist and Oregon Public Guardian and Conservator]

Chair Prozanski and members of the Committee,

Disability Rights Oregon (DRO) primarily opposes SB 380-1 because it appears to create a separate criterion for establishing a guardianship over a person with a disability. For example, existing state law already establishes a pathway to a temporary guardianship when someone is unable to make decisions for themselves and is in imminent and serious harm's way (See ORS 125.600-ORS 125.610). Also, there are laws pertaining to people who are found unable to aid and assist and recover after receiving court ordered restoration services and often recovery. Using the blunt instrument of a separate provisions for guardianship law not only raises serious liberty issues but also may inadvertently raise concerns that people with mental health disabilities have a separate but unequal entrée into guardianship services.

However, DRO supports efforts to provide the Office of Public Guardian and Conservator (OPG) with more funding and more opportunities to serve the aid and assist population in very narrow ways. For example, OPG would be an ideal service for individuals who are found "never able" to aid and assist and may be victims of abuse and neglect by virtue of their limitations. Guardianship for these purposes is consistent with existing guardianship statute and a bill to increase OPG's ability to provide these necessary supports in specified circumstances would be fully support by Disability Rights Oregon.

As written, SB 380-1 wrongfully separates out people under Aid & Assist and subjects them to different and laxer standards for the processes of having OPG appointed by the Court. All Oregonians should be subject to and benefited by the same guardianship and conservatorship laws, including laws to protect their privileged and confidential information as well as their Due Process rights. Undoubtedly, some people who are under Aid & Assist may require and benefit from having a Guardian and/ or Conservator, this can be accomplished by existing law. The OPG has specific provisions already existing in statute that should apply equally to all Oregonians. As SB 380-1 is written, DRO has the below-stated concerns,

SB 380-1 Treats People Under Aid & Assist Such That Their Civil and Human Rights are Diminished Through a Separate Guardianship Process:

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Disability Rights Oregon is the Protection and Advocacy System for Oregon

- SB 380-1 singles out people under Aid & Assist when there are existing laws related to guardianship and conservatorship when a person cannot make decisions for themselves such that they are in serious harm's way;
- The stated language of SB 380-1 appears to be drafted to make the Oregon Public Guardian and Conservator (OPG)'s work easier or more streamlined. The facilitation for OPG may negatively impact people's right to due process.
- It's concerning that SB 380-1, while delineating ways to facilitate OPG's work does not emphasize the rights of people to the least restrictive alternative, to retain all of their civil rights, to have their independence and self-reliance enhanced. Further, the fiduciary duty to listen to their preferences and values and to consider their choice (See ORS 125.315(g)-(i));
- Guardianship pursuant to ORS 125.300 and 125.315(g)-(i) require that guardianship support the protected person's independence and self-reliance and that the guardian listen to the protected person's choice. The listed collaborators for administering OPG's program are very limited. Where are the people/ groups that protected people would choose? People should have their voice and choice considered in who should collaborate in administering the OPGC program. (See Section 2 (4) (a), page 1);
- The records provision in 3(d) duplicates ORS 125.694(3) that already allows sharing of information in good faith to address public safety risks. As written, SB 380-1 violates people's right to privacy and confidentiality interest. Oregon laws are written to govern access to confidential and/or privileged documents. People subject to Aid & Assist should not lose their right to confidentiality and privacy, even if this would make OPGC's work easier (See section (3)(a)(A), page 5); *and*
- SB 380-1 appears to potentially set up a new legal standard for temporary guardianship for people under Aid & Assist. This disparate treatment has no basis or explanation. A specific standard for temporary guardianships exists in the law (See ORS 125.600-ORS 125.610). Therefore, the paragraph on the bottom of Page 7, Section E(f) regarding temporary guardianships should be deleted because it causes more confusion than clarification.

SB 380-1 should not be passed as written. The legal and human rights of people under Aid & Assist should not be jeopardized and there are existent routes to pursue guardianship and to ensure care coordination.

### **About Disability Rights Oregon**

Since 1977 Disability Rights Oregon has been the State's Protection and Advocacy System. 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". We are also mandated to "educate policymakers" on matters related to people with disabilities. Disability Rights Oregon served on the Public Guardian and Conservator Task Force as well as on the Office of Long-Term Care Ombudsman's Advisory Board and appreciate that the Oregon Public Guardian and Conservator serves Oregonians who are most in need.

If you have any questions regarding DRO's position on this legislation, please call Meghan Moyer at 503-432-5777 or email her at [mmoyer@droregon.org](mailto:mmoyer@droregon.org).