

Submitter: Theresa Hollis

On Behalf of:

Committee: Senate Committee on Judiciary

Measure: SB 528-2

I am a past Chair and current member of the Oregon State Bar Elder Law Section. I am a past President and current Board Member of Guardian Partners. I am a current member of WINGS (the Working Interdisciplinary Network of Guardian Stakeholders) as well as a member of the Guardian Conservator Association of Oregon.

I have represented many petitioners in protective proceedings in the last two and a half decades. I have also represented many respondents and protected persons.

I have listened to the proponents of this SB 528-2 and fully support their desire to inform respondents of their rights in guardianship cases and create an understandable notice regarding the right to court-appointed counsel.

Although the amendment to SB 528 is a substantial improvement, there are a couple of areas that cause me substantial concern.

First, I am convinced that the Oregon Judicial Department will be unable to comply with the additional data reporting requirements in SB 528-2. While it might sound reasonable to require a count of cases where the respondent is "a person with a developmental or intellectual disability," "a person with a physical disability and was under 65 years of age" or "a person with a mental illness" Oregon's guardianship laws do not require pleadings to include this information. How will the OJD determine when a respondent has a mental illness? "Person with mental illness" is defined in ORS 425.005. Is this the definition they are referring to? Guardianship Petitions are supposed to contain facts about what is currently happening in the respondent's life that causes the petitioner to believe that they are incapacitated. They do not simply state that the person is mentally ill.

Second, SB 528-2 broadly expands the times when the Court will be required to appoint counsel for a respondent or protected person. This may not be a problem if Disability Rights Oregon (DRO) is able to represent every respondent or protected person across the state who is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, for example. However, if DRO is unable to represent every respondent or protected person then we will be stuck with a system that is even more broken than it was. Oregon does not have sufficient attorneys to be appointed

to represent every objecting respondent or protected person. Oregon's probate Courts do not have sufficient staff to track down attorneys to represent respondents and protected persons. Will Oregon have the budget to hire additional attorneys for DRO so that they can handle all of these cases?

While I appreciate the efforts of the drafters of this bill to protect the rights of Oregonians subject to guardianships, I am concerned that they failed to include the Courts and guardianship stakeholders and have yet again come up with a plan that is not feasible.

Thank you.

Theressa Hollis

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