



TO: Senate Committee on the Judiciary
FROM: Disability Rights Oregon (DRO)
DATE: January 26, 2023
RE: SB 528 and DRO's Guardianship Reform Bill

Chair Prozanski and members of the Committee,

Disability Rights Oregon supports SB 528 because the bill acknowledges and supports people under guardianship and their legal, human and civil rights. Guardianship is a huge infringement on people's individual liberties and, thereby, impacts peoples' lives dramatically. The requested revisions to Oregon Revised Statute (ORS) Chapter 125 pertaining to people under guardianship, for the most part, provide instructions for the current law so that it may further support the respondent or protected person's independence, self-determination, and dignity to the maximum possible extent.

Here are the concerns we hope to address with these revisions:

- 1. Less Restrictive Alternatives Must be Explored:** There are people who are subject to unnecessary, indefinite guardianships, where less restrictive alternatives could be used instead. DRO has assisted clients where, rather than appointing a life-long substitute decision maker in a protective proceeding, less restrictive alternative supports such as a Declaration for Mental Health Treatment could be put in place to address intermittent periods of incapacity. The specter of having an unnecessary guardian is often very traumatizing and stigmatizing for people with disabilities.

This bill requires that a genuine effort to support people with less restrictive alternatives be made before a fiduciary is appointed in a protective proceeding. See SB 528 §2(1) at 1. Section 2 of SB 528 lists the less restrictive alternatives to guardianship that already exist in Oregon and that must be explored before a fiduciary may appointed in court: use of assistive technology and supported decision-making; appointment of a representative payee; execution of a power of attorney, ORS 127.005 – 127.045; appointment of a health care representative, ORS 127.505 – 127.660; execution of a declaration for mental health treatment, ORS 127.700 – 127.737; and any other decision-making supports to maximize independence. Further, SB 528 requires that petitions for the appointment of a guardian include factual information about how each of the listed less restrictive alternatives were explored and why a guardian is still necessary. SB 528 § 8 at 6.

- 2. Limited Guardianships Should Be Used as Least Restrictive Alternative:** There are people who have guardians with too much decision-making authority, given that the protected people are able to make their own decisions in some areas. For example, we've advocated for people who want to have a confidential, counselor-patient relationship, but their guardian inserts themselves by attending counseling sessions without the protected person's permission. DRO has also advocated for people whose guardians control aspects of their lives such as what music or other media they consume, what employment they pursue, and what level or type of education they attain. The right to make such everyday yet crucial life decisions is fundamental to maximizing a person's self-determination and dignity.

SB 528 ensures that guardianships are limited specifically to the particular areas of decision-making in which a judge finds by clear and convincing evidence the person is incapacitated. SB 528 § 7 at 4 – 5; see ORS 125.300 (1)(a) and ORS 125.305(1)(2). In addition, the bill introduces a presumption that a guardianship, when necessary, must be a limited one. SB 528 § 17 at 18 – 19. Such a presumption may be overcome by clear and convincing evidence that a plenary guardianship is the least restrictive alternative and is in the protected person's best interests. *Id.* The guardianship order must specify the limited areas of decision making over which the guardian will have authority, or must specify that the guardianship is plenary and include a statement of the court's findings. SB 528 §18 at 19. By limiting the authority of guardians only to specific, discrete areas of decision making, protected people retain rights crucial to maintaining self-determination and dignity.

- 3. Restoration of Rights Should Occur When A Protected Person is Eligible:** DRO has worked with people who no longer need a guardian but languish for years, even decades, without the autonomy, agency and dignity they are capable of and deserve. Such protected people may gain or regain decision-making capacity over time, or develop networks of decision-making supports that nullify the necessity of a guardian. In addition, some protected people continue to pay unnecessary guardianship or attorney fees over many years.

SB 528 recognizes that people change over time, and deserve an opportunity to terminate their guardianships when capacity is gained or regained, or when less restrictive alternatives would adequately support the person such that guardianship determination is in their best interest. This bill requires that a periodic review of the of the guardianship every five (5) years be made so that the many people who are eligible to restore their rights prior to death have a meaningful opportunity to do so. SB 528 § 3 at 1 – 2.

About Disability Rights Oregon

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Disability Rights Oregon is the Protection and Advocacy System for 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 Further, Disability Rights Oregon, as the system described in ORS 192.517(1), receives notice of pleadings regarding respondents and protected persons when they are or may be a resident of a mental health treatment facility or residential facility for individuals with developmental disabilities, or if there is an intent to place the respondent or protected person in such a facility. See ORS 125.060(7)(c) and ORS 125.070(8)(c).

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.

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).