

# Oregon Dependency Representation Task Force Report- Executive Summary

The 2015 Oregon Legislative Assembly passed Senate Bill 222 establishing the 18-member Task Force on Legal Representation in Childhood Dependency (Task Force). The Legislative Assembly asked the Task Force “to recommend models for legal representation in juvenile court proceedings that will improve outcomes for children and parents served by the child welfare system, to ensure that parties in juvenile court cases are prepared to proceed and to enable courts to resolve juvenile court proceedings as quickly and efficiently as possible.” It has been the task of this entity to review the current systems and business models used to provide representation for the government, parents, and children in child dependency cases, assess their efficacy, and provide recommendations on how to improve the dependency representation system and related practices in Oregon to protect due process and improve child welfare outcomes.

The Task Force gathered information on Oregon’s child welfare outcomes, Oregon’s current models of dependency representation, promising local practices, and national best practices through ten full task force meetings, five subcommittee processes, including many more meetings, various opportunities for court observation, and three informal practitioner lunches. The results of this work are presented in this final report in the series of findings and related recommendations set out below.

This is not the first time that Oregon has examined its dependency representation systems. It is, however, the first time that solutions that propose cost-effective full-representation have been recommended. Driven by a three-branch process, principles of due process, and a quest for better outcomes, this Task Force came together to look beyond the status quo and truly promote positive change, along with the inevitable compromise that outcome-driven progress requires.

## **The dependency representation system in Oregon faces a number of obstacles in fulfilling its intended purpose and functions:**

- Attorneys representing parents and children have difficulty protecting the statutory and constitutional rights of their clients when challenged with excessive caseloads and inadequate resources.
- Inconsistent state and agency representation models, a lack of uniform practice, and complicated and financial models pose a challenge to timely and effective case planning and case management.
- Obstacles to adequate and effective representation for all parties stand in the way of better outcomes for Oregon’s children and families.
- The state does not provide funding for legal consultation for Court Appointed Special Advocates (CASA) program staff or volunteers.

## **High quality consistent dependency representation:**

- promotes fairness and due process in the dependency system.
- protects children and improves outcomes for families.
- ensures that lawful decisions are made based on the best possible information.
- Provides attorneys with expertise and experience that enables them to champion and support system improvements.

## **Model Recommendations**

### Parent and Child Dependency Representation

- The Oregon State Legislature should allocate the funding necessary for the Public Defense Services Commission (PDSC) and the Office of Public Defense Services (OPDS) to adopt a workload model of contracting with a caseload cap (similar to the Parent and Child

Representation Program (PCRP) and the model adopted for parent representation in the state of Washington) for all counties in Oregon.

#### Government Representation

- The Oregon State Legislature should allocate funding to the Department of Human Services (DHS) to leverage federal grant and reimbursement programs to enter into a block grant (or “flat fee”) agreement with the Department of Justice (DOJ) for comprehensive agency representation in dependency cases. Nothing in this recommendation should be construed to eliminate “the state” as a party in dependency cases, but DHS resources should be directed to the entity that represents the agency.

#### Court Appointed Special Advocates

- Provide funds sufficient to support four statewide CASA Program Attorneys so that CASAs in Oregon have timely access to legal consultation and representation.

### **System Improvement Recommendations**

#### Unlawful Practice of Law

- A model of government representation that provides full representation for the agency will ultimately eliminate the risk of unlawful practice of law by DHS child welfare employees. The Task Force has recommended a model that provides for full representation for DHS.
- Should a model be adopted that does not provide the agency with full representation, the following recommendations will help mitigate unlawful practice of law by DHS employees:
  - all petitions, orders, and judgments must be prepared by an attorney or, if prepared by a non-attorney, an attorney must review, and adopt, the non-attorney’s work by signing the document to be filed with the court.
  - employees who appear in court without an attorney either should be sworn-in as fact witnesses or, where a proper foundation has been established,<sup>1</sup> as expert witnesses and present testimony pursuant to the rules of evidence.
  - Employees who appear in court without an attorney should not make legal arguments, cite to legal authority, or advocate for a legal position.

#### Performance Standards

- Relevant performance standards should be adopted for juvenile dependency attorneys who represent parents, children, and the government, these standards should include crossover case practice.
- Oregon practitioners should be trained in the performance standards relevant to their practice and cross-trained in the performance standards relevant to the practice of the other attorneys in the system.
- Oregon judges should be trained in the performance standards for all juvenile dependency attorneys (parent, child, and government practitioners)
- Non-lawyers who regularly participate in the juvenile dependency system, such as Citizen Review Board (CRB) members, CASA, and DHS workers, should receive training on the performance standards.
- Performance standards for all juvenile dependency attorneys (parent, child, and government practitioners) should, to the extent practicable, be incorporated into statewide quality assurance efforts.

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<sup>1</sup> While this may address the UPL issues, this would not address the DHS employee’s ability to be able to respond to cross-examination by other parties’ attorneys or understand the implications of their sworn testimony. This also creates inconsistencies statewide as courts do not always follow the same model of questioning the agency or take on the role or assume that responsibility.

## Quality Assurance

- Quality Assurance Outcome Measures should be adopted, collected, and reported to assess the effect of the current model of representation and the effect of any changes to the model recommended by this Task Force and implemented by the Legislative Assembly and the Executive Branch.
- Quality Assurance Output Measures should be adopted, collected, and reported to assess the current model of representation and the effect of any changes to the model recommended by this Task Force and implemented by the Legislative Assembly and the Executive Branch.
- A standing workgroup coordinated by the Judicial Department that includes representatives from DHS child welfare, DOJ, OPDS, and the Oregon District Attorneys Association (“ODAA”) should be formed to meet quarterly and implement the collection and reporting of the recommended quality assurance measures and engage in a continuous quality improvement process.
- Resources should be provided to the Judicial Department to coordinate and support these continuous quality improvement efforts described in Recommendation #3. Resources should also be provided to each entity supervising or coordinating the attorneys who practice in the dependency representation system (DOJ, OPDS, and ODAA) to support workgroup participation and the collection and reporting of quality assurance measures.

## Crossover Cases

- Oregon practice should target crossover youth who have current and simultaneous involvement in both the child welfare and juvenile justice system, including: 1) youth with open cases in the child welfare/dependency system who are subsequently referred to the juvenile justice/delinquency system, and 2) youth with open cases in the juvenile justice/delinquency system and who are subsequently referred to and become involved in the child welfare/dependency system.
- A basic statewide crossover case protocol should be established.
- The Oregon Juvenile Court Improvement Program (“JCIP”) should continue to partner with the Youth Development Council to help facilitate peer-to-peer technical assistance for counties that wish to develop more robust protocols than the basic statewide crossover case protocol.
- Performance standards for all delinquency, dependency, and criminal practitioners should be updated (or developed) to reflect the unique nature of representation in crossover cases.
- The OPDS should strive to ensure, where practicable, that a one- lawyer-one youth model is the general practice in crossover cases.
- The OPDS, the courts, and other system stakeholders should identify ways to implement consistent post-disposition representation across the state, including for youth committed to the Oregon Youth Authority.
- Training on crossover cases as well as the fundamentals of criminal, delinquency, and dependency practice should be made available in current continuing legal education courses and other training opportunities across these three practice groups.

## Task Force Implementation Recommendations

- A volunteer subgroup of Task Force members should continue to meet regularly to implement the recommendations of this report.

## Areas for Further Inquiry

The Task Force received testimony and presentations on several issues central to the dependency representation system that are in need of further investigation and expert recommendations. Improvement in these areas will better ensure the well being of Oregon children and families, including:

- Increased judicial resources;
- Development of, and adequate support for law school programs that develop a dedicated and diverse dependency workforce;
- Reduction in disproportionate placement of children of color in out-of-home care across the state; and
- Improved compliance with the Indian Child Welfare Act of 1978.