

Youth, Rights & Justice

ATTORNEYS AT LAW

To: Joint Ways and Means Subcommittee on Public Safety, 2013 Oregon Legislature

From: Mark McKechnie, Executive Director, Youth, Rights & Justice

Date: March 26, 2013

Re: HB 5041 – Public Defense Services Budget – **Support for CSL, POP 100 and POP 102**

Co-Chairs Williamson and Winters and Members of the Committee:

Youth, Rights & Justice urges your support of Current Service Level (CSL) funding for OPDS and the addition of the Policy Option Packages. POP 100 would provide funding to reduce juvenile dependency caseloads by 7%. POP 102 would begin to reduce the pay disparity between public defense attorneys and their counterparts in the District Attorney's and Attorney General's offices.

Public Defense Helps to Ensure the Laws You Pass are Implemented

What if you pass a law, and there is no one available to enforce it? The Oregon Legislature considers and passes a significant number of bills each session in an attempt to improve Oregon's child welfare system. The Legislature has enacted laws to protect the rights of children, relatives and parents. These policies largely rely upon the efforts of court-appointed attorneys for children and parents to make legal motions and arguments to the court and rely upon the court to make the appropriate rulings and orders.

There is clear evidence that at least one of the proposals before this Legislature shows great promise to improve outcomes in child welfare cases – the OPDS policy option package to reduce attorney caseloads (POP 100). This is the down-payment on a 20% reduction in dependency caseloads over three biennia.

Public Defense in Juvenile Dependency Cases

Juvenile dependency cases comprise 35% of the public defense caseload overall. These are attorneys appointed to represent children in foster care and their parents. Oregon has established a sound structure of non-profit public defense firms and other private lawyers to represent parents and children at the trial level. These attorneys have an ethical duty to zealously represent the interests of each and every client. But this structure is not living up to its promise, and the problem is a lack of resources.

Representation in dependency cases has been poorly funded relative funding for prosecutors and state's attorneys who appear on the very same cases. **Defense attorneys carry too many cases.** It is not unusual for attorneys to carry caseloads that are more than double the guidelines of the American Bar Association. Youth, Rights & Justice attorneys currently carry caseloads that are 25%-50% higher than the ABA maximum of 80 cases.

In order to keep caseloads as low as possible, it means that our **salaries are not competitive**, compared to most lawyers in the state. Juvenile cases are funded at a lower level than adult felony cases. **Attorneys working in the District Attorney's office and appearing on the same juvenile cases earn salaries that are 50% higher, compared to our attorneys who represent children and parents.** If these disparities remain, **a new lawyer starting out in the District Attorney's office will make \$789,375 more than a new lawyer in our office over a 25-year career** (in 2012 dollars).

Our attorneys' salaries are roughly one half of the median salary for attorneys in the Portland area overall – that's the bottom 25%. At the same time, attorneys who have attended law school in the last decade are carrying onerous levels of **student loan debt, ranging from \$100,000 to \$150,000**. We have had several attorneys who have left or who have rejected job offers we have made because they simply could not pay their loans and support their families on our salaries. These were very skilled and talented attorneys who fully supported our mission and wanted to practice juvenile law.

Caseloads Matter

The American Bar Association recommends that attorneys in juvenile cases, representing parents or children, carry **between 60 and 80 cases** at any given time. It is not possible for most attorneys in Oregon to meet this standard at current funding levels.

Our attorneys carry caseloads that range from 95-125 cases per full-time attorney. With so many cases, they juggle a nearly unmanageable schedule of court hearings, settlement conferences, administrative meetings and, most importantly, appointments with their clients. Attorneys do some of the most critical work outside of the courtroom: providing legal counsel, information and advice to their clients and advocating for services, such as housing, visitation, mental health or substance abuse treatment, disability benefits, education services and others.

We know that lower caseloads, coupled with meaningful attorney performance standards, lead to better outcomes in child welfare cases. And better outcomes save the state money. Washington State has had the rare opportunity to set up a comparison group study. Over time, 25 counties participated in a pilot project that capped parents' attorney's caseloads at 80 cases per attorney (the ABA maximum) and provided additional support from investigators, social workers and legal assistants.

Parents who had attorneys with more time and more resources were more likely to have their children returned. Parents who had their children returned were also more likely to keep them home. Children were less likely to re-enter foster care. This is a win-win-win: good for children, good for parents and good for the state.

In 2010, Washington found that **counties with reduced caseload for attorneys saw 39% more family reunifications**, compared to counties with higher attorney caseloads.

Justice Delayed is Justice Denied

Kids can't wait. Attorney caseloads that are too high delay progress in cases and lead to longer foster care stays. When there are multiple attorneys on a case, each with high caseloads, scheduling conflicts and court delays are unavoidable. Washington reviewed 12,000 cases across 25 counties and found that, compared to high-caseload counties, counties with lower attorney caseloads had:

- **104% higher adoption rates**
- **83% higher guardianship rates, and**
- **Adoptions and guardianships were established 1 year sooner, on average.**

In other words, when attorney caseloads were lower, children were still more likely to leave foster care and leave sooner, even in cases where reunification did not occur.

Conclusion

The health of our public defense system of representation for children and parents depends upon sufficient resources to attract and retain qualified attorneys and to ensure that their workloads are not so great that they cannot be effective. **Adequate funding for legal representation of children and parents is a moral obligation and a wise investment.**

With sufficient resources, we can reduce the time children spend foster care and the time that children spend separated from their families. Reducing days spent in foster care is an investment that saves state resources in the long run. We encourage the Legislature to provide adequate resources to OPDS by funding the Current Service Level request, as well as Policy Option Packages 100 and 102.