

DHS Office of Child Welfare: Proposed Measure

Background:

In general, at this time and historically, caseworkers appear in court without counsel in post jurisdictional, uncontested hearings. When a hearing becomes contested, the judge or caseworker note the need for counsel and the proceeding is set over to allow the department to appear with counsel. Pre-jurisdictionally, caseworkers appear without counsel where the state is represented by the District Attorney, except in those cases where the position of the department and the District Attorney are not in alignment. There are some variations around the state depending on the judge, and whether the district attorney continues to represent the state in dependency matters.

Problem:

Recently, three judges have informed the department they intend to enforce or are enforcing ORS 9.320, requiring state agencies to appear in court proceedings with counsel. This represents a budgetary issue for the department that compounds if other judges make the same decision.

Solution:

DHS is seeking to create options for the legislature by offering a temporary legislative solution that maintains the status quo, allowing time for the department, stakeholders and policymakers to have a full discussion about the ramification of the enforcement of this statute and potential mitigations.

The temporary solution we are seeking is:

1. In ORS 419B, statutory language to the effect that the Department of Human Services may appear in juvenile court without counsel in uncontested hearings, status hearings, and other hearings the court may call;
2. That DHS may appear without counsel in pre-jurisdictional hearings when a District Attorney is representing the state, but would appear with counsel when the position of the state and the Department are not in alignment.
3. If a hearing becomes contested, the court is responsible for pending the proceeding to allow the department to access counsel. The court is in the best position to make the determination of whether there are contested elements that would dictate the department have counsel.
4. Under no circumstances will caseworkers engage in the unauthorized practice of law.
5. A sunset provision of sufficient duration to allow for discussions leading to a more permanent fix.

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