

Youth, Rights & Justice

ATTORNEYS AT LAW

To: Senate Committee on Judiciary, Oregon Legislative Assembly
From: Mark McKechnie, Executive Director, Youth, Rights & Justice
Date: April 6, 2015
RE: Concerns regarding SB 222-A

Youth, Rights & Justice was founded in 1975 and represents children and parents as parties in juvenile dependency cases, including cases at the trial and appellate levels. YRJ does not disagree that the attorneys representing the Department of Human Services (DHS) from the Department of Justice (DOJ) should appear in more hearings and other proceedings. DHS needs and deserves wise legal counsel.

Our concerns with this bill are the substantial cost and potential diversion of resources to state agencies which come at the expense of the children and families served by the system.

- DOJ will charge DHS **\$181 per hour** for attorney representation.
- Attorneys for the state already have substantially higher compensation, more manageable workloads and significantly more administrative support, compared to attorneys representing children in foster care and their parents.
- Under this proposal, many counties will have **preliminary hearings in which the state is represented by two lawyers** -- the District Attorney and the DOJ, representing DHS -- while **parents and children will be unrepresented**. Critical decisions are made at these hearings which can impact the rest of the case and the chances that a child will return home.

The reason that many DHS staff members appear without counsel at routine hearings now has been the substantial cost of the hourly fee structure. It would be much more cost effective for DHS to hire in-house counsel or contract out for legal services. These options would require different statutory changes than those contained in SB 222-A.

We question the substantial expense of this bill, relative to the opportunity costs of spending a similar amount to meet other needs, such services to parents and children, legal representation for parents and children, and/or the court system itself. Resources will be spent disproportionately on state agencies, rather than on the children and parents they serve.

Comparing the total cost divided by attorney FTE, each DOJ attorney position is 84.6% more expensive than a juvenile public defender attorney position in my organization, taking into account total costs, including management, administrative staff and other overhead.

2015-17 annual costs	DOJ Representation of DHS (Fiscal of SB 222)	YRJ representation of children/parents (assumes CSL funding)	Difference	Percent Difference
Cost per Attorney FTE including overhead	\$407,746	\$220,873	\$186,873	+84.6%

An independent, not-for-profit law firm, Est. 1975

401 NE 19TH Ave., Suite 200 • Portland, OR 97232 • (503) 232-2540, F: (503) 231-4767 • youthrightsjustice.org

The stated purpose of SB 222 is to “addresses the need for the Department of Human Services (DHS) to appear with legal counsel in juvenile dependency proceedings” (DOJ testimony, 3/10/15). Yet, on an FTE basis, attorneys account for less than a third of the increased staffing proposed in 2015-17, which means that much of the cost is for non-attorney staff positions and other overhead costs.

	DOJ (SB 222A)	Public Defender Offc.	Difference	Pct. Diff.
Attorney FTE as percentage of total FTE	31.7%	45.7%	-16%	-50.5%

The fiscal impact of SB 222 in the first biennium is an **additional \$7.33 million**. The counties included in the first two phases of implementation account for approximately 40% of Oregon’s foster care population.

The **additional cost** in the second biennium increases to **\$18.99 million**. This includes a full biennium for the first two phases and 12 additional counties for the full biennium, which account for another 35% of Oregon’s foster care population.

The remaining 12 counties would not be phased in until July 2018. They account for approximately 25% of the state’s foster care population, putting the excess biennial cost of this bill at **more than \$21 million per biennium** once fully implemented in 2019-21.

As a point of contrast, the total increases to public defense over the last three biennia combined (2009-11, 2011-13 and 2013-15) totaled *only \$12.07 million for all public defense representation* at the trial level (and some at the appellate level) in all juvenile dependency cases, juvenile delinquency cases and adult criminal cases statewide – an average increase of *\$4.02 million per biennium* to a system that provides representation in more than 170,000 trial cases per year.

We strongly encourage more serious consideration of alternative and less costly models to provide legal representation for DHS and improved funding for each part of the system that works to protect and meet the needs of children. We hope that the Legislature will approve this policy change only after a thorough examination of the most cost-effective methods for funding legal representation for the agency.

Again, YRJ believes that DHS staff members should have legal representation in court hearings. There are many reasons why this is desirable. However, the premium price paid for legal representation for DHS has prevented this change from occurring. If the Legislature approves the proposed legislation and its costs, **it will exacerbate the existing inequities between the resources that go to represent state agencies and their employees versus the children and families whose rights are at stake** in these legal matters.