



**DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL**

**MEMORANDUM**

DATE: April 6, 2015

TO: Honorable Floyd Prozanski, Chair  
Senate Committee on Judiciary

FROM: Aaron Knott, Legislative Director

SUBJECT: SB222 – Protecting Child Welfare

This testimony supports the proposed -3 amendment to SB 222.

**BACKGROUND**

SB 222 addresses the need for the Department of Human Services (DHS) to appear with legal counsel in juvenile dependency proceedings as set forth in ORS 9.320. This requirement was temporarily suspended during the 2014 legislative session (HB 4156). The current law which allowed for temporary continuation of status quo in some counties is set to sunset on 6/30/2015. This bill as proposed in the -3 amendment allows for a rolling sunset, and thus a staged implementation of what will ultimately be full legal representation of DHS by the Department of Justice (DOJ) over the next two biennia. The unamended bill simply lifts the sunset and eliminates the requirement that DOJ appear on behalf of caseworkers during certain hearings, exposing those workers to heightened legal liability and the courts to greater delay and docket congestion.

DHS Child Welfare Caseworkers are, in most Oregon counties, routinely required to appear in court without legal representation. While many caseworkers can be strong advocates for their agency's position, there are serious problems with this practice. Other agencies and entities involved in juvenile dependency cases agree that cases would be better presented and prepared, and children and families would be better served over time, if Child Welfare caseworkers were legally represented. DOJ has worked closely with DHS and the Oregon Judicial Department (OJD) to propose the -3 amendment which allow for staged implementation of full in-court legal representation of DHS caseworkers in juvenile dependency hearings by June 30, 2018.

**SCOPE OF AMENDMENT**

The -3 amendment would sequentially lift the sunset in counties mutually agreed upon by DOJ and DHS in consultation with OJD, ultimately resulting in full in-court legal representation of DHS case workers statewide. Six counties would be implemented by December 31, 2015. Six additional counties by June 30, 2016. Twelve additional counties by June 30, 2017. The

remaining twelve counties by June 30, 2018. The schedule for roll-out is detailed by county within the proposal.

This phased rollout of full legal representation will mitigate the financial impact to the State of Oregon by allowing for the appropriate hiring and training of additional necessary staff and incorporation of efficiencies and best practices made apparent during the implementation process.

The proposed rollout has a fiscal impact which cannot be circumvented if full representation is to be achieved. However, certain offsetting federal Title IV-E matching funds should be available to DHS. Additionally, OJD has committed to assist in reducing costs to the state by implementing dedicated docket days and telephonic or video attorney appearance options, steps which should lower the ultimate staffing level requirements.

### **SB 222 -3 PROVIDES NECESSARY LEGAL SERVICES FOR CASEWORKERS**

DHS caseworkers are charged with the responsibility of protecting some of Oregon's most vulnerable citizens from harm, providing children with lasting stability through guardianship and adoption, and the strengthening, preservation and reunification of families wherever possible.

DHS caseworkers are not legally educated, nor are they trained to interpret the law, or represent their agency in court. They often make decisions with significant legal impact on families and children without the benefit of accessing legal counsel, and then must represent their agency in court and defend or justify those decisions upon questioning from the court and other legal counsel. Appeals of a case with an inadequate record delay permanency sometimes for up to a year, often requiring a remand for case to be re-tried with counsel.

Lack of legal representation in court can result in delayed permanency for children, failure to provide critical notice of court proceedings, loss of federal matching dollars for foster care, and delayed return of children to safe parents. It can also result in longer and more contested court proceedings, and reduced settlement of cases.

Conversely, DHS caseworkers who are represented can consult with counsel throughout the life of the case, avoid unnecessary and costly delays in permanency for children, appear as a party alongside counsel in court, and generally increase the amount of time spent with children and families instead of on legal work.

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