

Agency Report

Department of Justice and the Department of Human Services

Child Welfare Caseworker Representation

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Request: Acknowledge receipt of a report on Child Welfare Caseworker Representation.

Recommendation: Acknowledge receipt of the report.

Analysis: The Department of Justice (DOJ) and the Department of Human Services (DHS) have submitted a joint report in response to the following budget note [HB 5012 (2014)] and after submission of preliminary report to the Legislative Fiscal Office in August of 2014:

Costs of legal representation in an increasingly complex modern legal system continue to drive agency budget and policy decisions. The Department of Justice has begun working with the Department of Administrative Services and agencies to identify and evaluate alternative funding models to improve the stability, affordability, and effectiveness of legal costs for agencies and to encourage pro-active consultation with the Department by agencies.

As the Department of Justice continues with this effort, it shall prioritize developing options for legal services for the Child Welfare program and report on these efforts to the Joint Committee on Ways and Means during the 2015 legislative session. In addition, no later than September 1, 2014, the Department of Justice and the Department of Human Services will also provide a joint written status report to the Legislative Fiscal Office on the specific options under consideration and progress being made on the development of those options.

While legal services and costs are not new topics for DHS, discussion about the appropriate level of legal services for the agency has recently intensified. In 2013, some circuit court judges raised concern about DHS child welfare caseworkers appearing in court for juvenile dependency hearings without legal representation. ORS 9.320 requires state agencies to appear in court proceedings with Attorney General counsel. However, in practice, DHS child welfare caseworkers typically appear in court without counsel in post-judicial, un-contested hearings. If a hearing becomes contested, the proceeding is set over to allow DHS to appear with counsel. Pre-judicially, caseworkers appear without counsel when the state is represented by the district attorney, except in those cases where the position of DHS and the district attorney are not in alignment.

To address the concern of judges, the Legislature passed HB 4156 (2014) to allow DHS child welfare caseworkers to appear in court without legal representation until June 30, 2015, when the measure sunsets. A resolution to the legal representation issue ended up being the focus of the agencies' work under the budget note, rather than a broader look at Child Welfare legal services and costs.

The report outlines three options, which all assume DOJ will provide full legal representation for caseworkers. The options have some variation in service models, but each one phases-in full legal representation over two biennia. For the 2015-17 biennium, the phase-in dates are: December 31, 2015 (six counties); June 30, 2016 (six counties); and June 30, 2017 (12 counties). For the 2017-19

biennium, the final phase-in would be June 30, 2018 (12 counties).

The following table summarizes the options and associated costs:

	Option	Geographical Area	2015-17 Phase 1-3 Cost	2017-19 Phase 4 Cost	Total Estimated Cost
I.	DOJ representation with regional offices	Medford; Eugene; Salem; Pendleton; and Portland.	\$7.1M 57 positons 28.25 FTE	\$4.9M 20 positons 16.38 FTE	\$12M 77 positons 44.63 FTE
II.	DOJ representation with <i>additional</i> regional offices	Medford; Eugene; Salem; Pendleton; Portland plus Klamath Falls; Coos Bay; Bend; and Ontario.	\$6.8M 58 positons 27.56 FTE	\$4.8M 23 positons 16.19 FTE	\$11.6M 81 positons 43.75 FTE
III.	DOJ and Special Assistant Attorneys General (SAAG) Staffed Offices	Medford; Eugene; Salem; SAAG Office in Klamath County; Pendleton; SAAG Office in Coos County; Bend; Pendleton; SAAG Office in Malheur County; and Portland.	\$6.3M 53 positons 25.64 FTE	\$4.6M 19 positons 14.88 FTE	\$10.9M 72 positons 40.52 FTE

**The DHS and the Public Defense Services Commission may have costs in addition to those listed in the table with the Judicial Department anticipated to have minimal costs.*

The report is silent on other alternatives to resolving the legal representation issue. Some of these might be options allowing caseworkers to appear without DOJ counsel under specific circumstances, models drawing from practices in other states or national best practices, and opportunities for DHS to use non-DOJ counsel. There appears to be no consideration given for extending the current exception, which could allow for completing a risk assessment on the current practice or for doing more work on alternatives. As noted earlier, the report also does not cover alternative funding or service provision models for Child Welfare legal services in general.

To take care of the HB 4156 sunset, SB 222 was introduced at the request of the Governor for DHS. The introduced version of the measure extends the existing exception until June 30, 2017. However, the measure, which has a referral to Ways and Means, was amended to include DOJ legal representation of DHS child welfare caseworkers consistent with Option #1 in the budget note report.

Neither the 2015-17 Governor’s budget or the Co-Chair’s budget framework include funding above the current service level for costs related to legal representation of DHS child welfare case workers.

The Legislative Fiscal Office recommends acknowledging receipt of the report.