

Analysis

Item 20: Department of Justice and Department of Human Services Juvenile Dependency Legal Representation

Analysts: John Borden and Laurie Byerly

Request: Acknowledge receipt of a report on the phased-in implementation of full legal representation for child welfare caseworkers.

Analysis: In the 2017 session, the Legislature approved funding for the Department of Justice (DOJ) through HB 5006 and SB 5526 to provide enhanced legal representation to child welfare caseworkers in all juvenile dependency proceedings. DOJ also provides legal counsel, legal advice, litigation support, and training for these workers, who are employed by the Department of Human Services (DHS).

DOJ received \$6.9 million Other Funds expenditure limitation and 35 permanent full-time positions (30.80 FTE) to support a three-phase roll out of the program statewide; DHS received General Fund to pay DOJ for the expanded services. There are no matching Federal Funds budgeted and DOJ was directed to bill DHS using DOJ's traditional fee-for-service billing model. The Legislature also extended the sunset on a law authorizing DHS to appear as a party in a juvenile court proceeding without appearance of an Attorney General from June 30, 2018 to June 30, 2020 to accommodate the planned implementation schedule.

Consistent with HB 5006 budget report language, \$4 million of the funding was unscheduled pending demonstration to the Legislative Fiscal Office (LFO) that the work performed, billing, reporting, and communication between the agencies is consistent with the budget cap, implementation schedule, and service level expectations. The agencies are still working on meeting these criteria; based on current projections, the agencies will not need to access the unscheduled funds until January 2019. The chart below shows projected expenditures, by phase, for the 2017-19 biennium.

Legal Representation Costs by Phase

	2017-19 Projected Expenditures	Pos	FTE
Phase I			
Oct-17 thru Jun-19	\$1,535,789	9	7.92
Phase II			
Feb-18 thru Jun-19	\$3,257,901	21	18.48
Phase III			
Mar-18 thru Jun-19*	\$266,793	5	4.40
Projected Total	\$5,060,483	35	30.80
Budget	\$6,916,041	35	30.80
Surplus/(Deficit)	\$1,855,558	-	-

*Projections account for some Phase III start up costs, but positions and FTE do not reflect staffing levels needed to cover Multnomah County.

Phase I and II of the rollout were completed on schedule; however, DHS and DOJ did need to modify the original schedule to accommodate the needs of specific counties, primarily by advancing certain counties to an earlier phase. As noted in the agencies' letter, the remaining six counties in Phase III (Clackamas, Clatsop, Marion, Multnomah, Union, and Washington) now plan to move to the new model effective July 1, 2019. The report notes seven counties moving on that date, however, after the report was submitted, DOJ assumed the legal representation in Wallowa county.

While this timeline is a shift from the initially expected January 1, 2019 implementation date, the legal deadline should still be met. The shift helps current biennium expenditures track well with budget but provides less actual experience on which to base budget and staffing level needs for 2019-21. Estimates are still under development; the agencies' effort includes a focus on the workload associated with Multnomah County. The county has a large volume of cases and includes a shift in responsibility for the termination of parental rights from the county to DOJ; these proceedings have been handled historically by the county in a unique arrangement.

The Legislative Fiscal Office (LFO) requested this status report from the agencies to ensure the Legislature understands the change in timing for the last phase of implementation and the full body of work expected to move from Multnomah County to DOJ.

Some 2019-21 costs are expected to be paid for by funding in the DHS budget previously used to cover the intergovernmental agreements with counties' that supported court appearances or other services provided by district attorney offices. LFO expects DOJ and DHS to continue providing updates between now and the 2019 legislative session on both current biennium program status and future biennium needs.

Along with a request to reschedule 2017-19 spending authority, LFO believes there may be position classification or position authority changes needed to align the budget with how positions are being used currently and in the future. Changes could be addressed by the Emergency Board in December 2018 or early in the 2019 legislative session.

Legislative Fiscal Office Recommendation: Acknowledge receipt of the report.

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Department of Justice/Department of Human Services
Lisper/Connolly

Request: Report on the phased in implementation of the full Department of Justice (DOJ) juvenile dependency representation to the Department of Human Services (DHS) Child Welfare Program.

Recommendation: Acknowledge receipt of the report.

Discussion: State law prohibits state agencies from appearing in court proceedings without the representation of the Department of Justice. Historically, this prohibition has not been uniformly applied and specifically, DHS child welfare caseworkers have not been consistently represented in child dependency hearings, although other parties in the proceedings were represented by counsel. The impact of the lack of representation on the welfare of children, the effectiveness of caseworkers, and the efficiency of court proceeding has been a concern for many years. In 2016, the legislatively authorized Oregon Task Force on Dependency Representation recommended DOJ assume all dependency court representation for DHS.

The 2017 Legislature provided some funding to support the recommendation and included a Budget Note in House Bill 5006 (2017) directing DOJ to roll out statewide implementation of full-representation in three phases. Phase I and II are complete. The third phase is scheduled to be completed by July 1, 2019. In addition, there was an early roll out of Douglas, Baker and Curry Counties at the request of local officials, which leaves the following seven counties to be completed by July 1, 2019: Clackamas, Clatsop, Marion, Multnomah, Union, Washington and Wallowa.

Throughout the roll out, DOJ and DHS have engaged in meetings and discussions between their agencies. The discussions have included Central Office staff along with local managers and supervisors. DOJ has also engaged in discussions with judges, District Attorneys and other local entities involved in child welfare. DOJ reports communication with involved parties has continued after implementation, in order to ensure a smooth transition and learn how to improve the process.

DHS has been monitoring the impact of representation on child welfare caseworkers involved in Phase I. A majority of caseworkers and supervisors surveyed in Phase I agreed, or strongly agreed, the caseworker experience in court has been more positive with DOJ representation. Feedback from caseworkers has also been used to improve the implementation of Phase II and III.

The agencies acknowledge the challenges there have been, including addressing local court practices and an increase in DHS cases resulting in a larger than anticipated caseload for DOJ. The agencies continue to actively engage with each other and the remaining county systems awaiting implementation. The agencies anticipate all counties will be receiving the same level of legal services by the July 1, 2019 deadline.

DOJ and DHS are continuing to train field staff to ensure they meet the goal of achieving statewide consistency in the representation of child welfare caseworkers.



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Update on DHS/DOJ Implementation of Full Legal Juvenile Dependency
Representation to the DHS Child Welfare Program

Dear Co-Chairpersons:

Nature of the Report

The Oregon Department of Human Services (DHS) and Oregon Department of Justice (DOJ) jointly present this update to the committee regarding the phased-in implementation of full legal juvenile dependency representation to the DHS Child Welfare program.

1. DOJ's Representation in Child Welfare Matters

The Child Advocacy Section (ChAS) of DOJ is charged with providing consistent, timely, and accurate legal counsel to DHS to assist in preventing the abuse and neglect of children and preserving and reunifying families when appropriate by increasing parenting capacity. ChAS consults with and provides legal advice to DHS throughout the life of a juvenile dependency case, although historically has not appeared in all dependency court hearings to represent DHS.

Although state law prohibits state agencies from appearing in court proceedings without DOJ representation, those restrictions have not been

uniformly enforced in dependency proceedings for DHS. As a result, DHS caseworkers have routinely appeared without legal counsel while almost all of the other parties to the proceedings have counsel (including court-appointed representation). DHS caseworkers are not trained as lawyers and when required to appear in court on their own are often at a disadvantage, which has contributed to delays in achieving permanency for children in the custody of DHS, prolonged foster care placements for children, increased costs to DHS, and significant turnover in DHS caseworkers. Judges have also raised concerns regarding the unauthorized practice of law by DHS caseworkers.

2. Oregon Task Force on Dependency Representation

Over the past 15 years, legal representation of DHS in juvenile dependency cases has been the subject of much study and discussion, in particular due to the fact that requiring caseworkers to appear in court unrepresented has put a strain on DHS and juvenile courts. The issue was the subject of a 2016 report by the legislatively authorized Oregon Task Force on Dependency Representation (“Dependency Task Force”), which recommended that DOJ assume all dependency court representation of DHS. The Dependency Task Force concluded that this “full-representation” model would promote attorney-caseworker collaboration, improve caseworker job satisfaction and retention, avoid the risk of unintended unlawful practice of law by caseworkers, and improve the overall efficiency and cost-effectiveness of the child welfare system. Legislators also considered that access to high quality consistent legal representation in juvenile dependency proceedings for DHS would allow DHS caseworkers more time to focus on casework and providing services to families, improve caseworker retention, reduce the risk of caseworkers unlawfully practicing law, provide DHS with oversight and consultation, and improve outcomes for children and families.

The work of the Dependency Task Force resulted in two similar legislative proposals in the 2017 Session (HB 2345 and SB 525). Although the 2017 Legislature did not pass either HB 2345 or SB 525, the Legislature granted funding for this work as part of HB 5006-A. The budget note attached to HB 5006-A directs statewide implementation of full-representation through a three-phase rollout, with the third and final phase being completed by January 1, 2019 (now amended to July 1, 2019 to accommodate county budgets).

3. Agency Action and Implementation Status

Pursuant to HB 5006-A and related budget report, DOJ and DHS planned for a phased-in implementation of full legal juvenile dependency representation for DHS statewide. The completion dates and counties included in each phase are:

Phase I Counties (January 1, 2018): Benton, Coos, Gilliam, Grant, Hood River, Josephine, Lane, Lincoln, Linn, Morrow, Polk, Sherman, Tillamook, Wasco and Wheeler (also implemented in Douglas)

Phase II Counties (July 1, 2018): Columbia, Crook, Deschutes, Douglas (implemented in Phase I), Harney, Jackson, Jefferson, Klamath, Lake, Malheur, Umatilla and Yamhill (also implemented in Baker and Curry)

Phase III Counties (July 1, 2019¹): Baker (implemented in Phase II), Clackamas, Clatsop, Curry (implemented in Phase II), Marion, Multnomah, Union, Washington and Wallowa

DHS and DOJ have been working closely together to implement full representation. As of the date of this letter, full implementation has occurred successfully in all Phase I and Phase II counties², and conversations have begun with Phase III counties in anticipation for implementation on July 1, 2019.

As part of the implementation process, DOJ and DHS had a number of collaborative discussions as well as formal scheduled meetings between DOJ management, and DHS Central Office participants and managers, as well as local branch management and supervisors across the state. DOJ also had extensive discussions with judges, District Attorneys and Deputy District Attorneys, county Juvenile Departments, CASAs, Consortium Attorneys and other interested local partners. Those conversations continued during the transition, and in many cases have continued post-implementation to ensure that the work transferred appropriately and that any unforeseen issues could be quickly addressed.

¹ Implementation of Phase III was originally scheduled for January 1, 2019; however, the budget note allowed flexibility of that date "depending on the needs of a specific county." To accommodate various county budgets and need for transition time, the deadline was extended to July 1, 2019.

² See attached map.

To accommodate circumstances in several counties, DOJ agreed to implement full representation early. For example, Douglas County was scheduled for implementation as part of Phase II by July 2018, but DOJ assumed responsibility for all juvenile dependency work on January 1, 2018 at the request of the District Attorney. DOJ also assumed responsibility for all juvenile dependency work in Baker County (a Phase III county) in November 2017, due to a departure of a deputy district attorney staff member in that county, and is in the process of fully transitioning Curry County (a Phase III county) as of the date of this letter, at the specific request of the court.

As DOJ continues to implement full representation, DOJ has been engaging with judges and others throughout the fully implemented counties to check in on progress, work on system efficiencies and address any unforeseen circumstances. To date, DOJ has received positive feedback from judges and court staff in many counties, including Coos, Benton, Deschutes, Lincoln, Grant, Malheur and Yamhill.

In addition, DHS has been evaluating the project from the perspective of DHS Child Welfare caseworkers, as one of the important goals of this project is to reduce stress to caseworkers due to time spent in court and to reduce the resultant caseworker retention issues. DHS has asked Child Welfare caseworkers in Phase I counties about their experiences prior to and after implementation of DOJ full representation and is in the process of gathering the same information for Phase II counties. A majority of caseworkers and supervisors surveyed in Phase I strongly agree or agree that the caseworker's experience of the court process has been more positive after the DOJ full representation implementation. One respondent's feedback includes: *"I cannot believe I used to go to court hearings without representation. I am very glad to have an AG at all hearings. not just for the legal aspect, but for overall continuity of the cases."* Other feedback from the Phase I counties about the changes and the process has helped improve the Phase II and III implementation. The entire process has opened opportunities locally for DOJ AAGs and DHS Child Welfare caseworkers and supervisors to sort out roles and responsibilities towards an effective and efficient system of legal representation.

DOJ and DHS have partnered effectively to ensure that the implementation of juvenile dependency legal representation has been planful, timely, and thoughtful of other county participants in the child welfare system. There have been challenges, including the increase in DHS cases resulting in a larger than expected case load for DOJ attorneys as well as localized specific court practices preventing the efficient use of state resources. DOJ and DHS, however, have

learned valuable information from the implementation of the early phases and continue outreach to counties to address remaining issues.

Preparation for the remaining seven counties in the final phase is underway, at which point all DHS branches statewide will be receiving the same level of enhanced legal services and DHS will no longer appear unrepresented in court. DOJ is in the process of meeting with judges, District Attorneys and local court practitioner teams regarding the transition plan for the Phase III counties' (Clackamas, Clatsop, Marion, Multnomah, Union, Washington and Wallowa) and implementation date of July 1, 2019. Lastly, DOJ and DHS are combining efforts around training field staff in both agencies, to ensure continued efforts to achieve statewide consistency whenever possible. DOJ and DHS remain committed to working together positively and productively to improve Oregon's child welfare system.

Action Requested

Receipt and acknowledgement of this report.

Legislation Affected

None at this time.

Thank you for your consideration,



Fariborz Pakseresht
Director, DHS



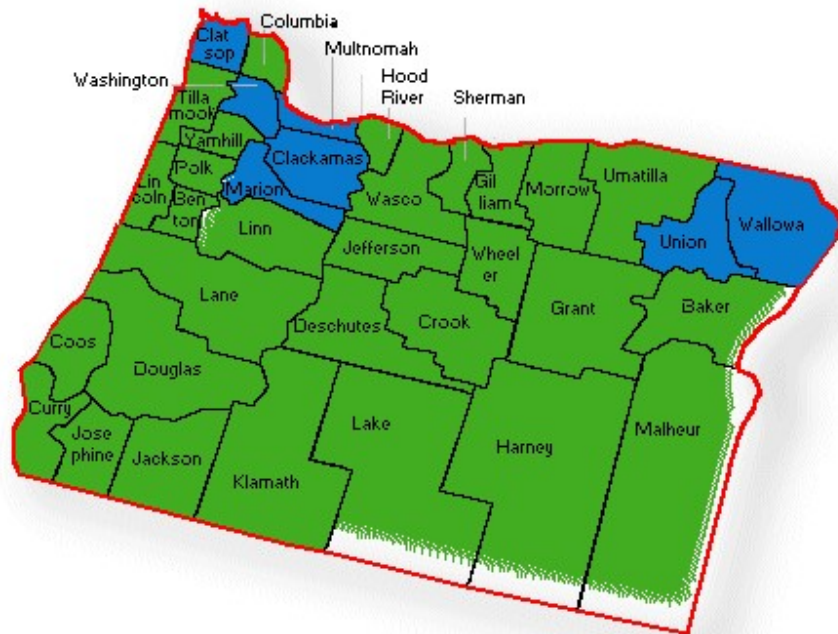
Frederick Boss
Deputy Attorney General, DOJ

DM#9137647

ATTACHMENT

DHS Legal Representation

- - Phases I & II
- - Phase III



NOTES:
Phases I & II - fully implemented

Source: diymaps.net (c)