

# Oregon Task Force on Dependency Representation

Established by Senate Bill 222 during the 78th Oregon Legislative Assembly

## Executive Summary

July 2016

The 2015 Oregon Legislative Assembly passed Senate Bill 222 establishing the 18-member Task Force on Legal Representation in Childhood Dependency (Task Force). The Legislative Assembly asked the Task Force “to recommend models for legal representation in juvenile court proceedings that will improve outcomes for children and parents served by the child welfare system, to ensure that parties in juvenile court cases are prepared to proceed and to enable courts to resolve juvenile court proceedings as quickly and efficiently as possible.” The Task Force gathered information on Oregon’s child welfare outcomes, Oregon’s current models of dependency representation, promising local practices, and national best practices through ten full task force meetings, five subcommittee processes, including many more meetings, various opportunities for court observation, and three informal practitioner lunches. The results of this work are presented in the series of findings and related recommendations set out below.

This is not the first time that Oregon has examined its dependency representation systems. It is, however, the first time that solutions that propose cost-effective full-representation have been recommended. Driven by a three-branch process, principles of due process, and a quest for better outcomes, this Task Force came together to look beyond the status quo and truly promote positive change, along with the inevitable compromise that outcome-driven progress requires.

### **The dependency representation system in Oregon faces a number of obstacles:**

- Attorneys representing parents and children have difficulty protecting the statutory and constitutional rights of their clients when challenged with excessive caseloads and inadequate resources.
- Inconsistent state and agency representation models, a lack of uniform practice, and complicated financial models pose a challenge to timely and effective case planning and case management.
- The state does not provide funding for legal consultation for Court Appointed Special Advocates (CASA) program staff or volunteers.
- Obstacles to adequate and effective representation for all parties stand in the way of better outcomes for Oregon’s children and families.

### **High quality consistent dependency representation:**

- protects children and improves outcomes for families;
- promotes fairness and due process in the dependency system;
- ensures that lawful decisions are made based on the best possible information; and
- provides attorneys with expertise and experience to champion and support system improvements.

### **Model Recommendations**

#### Parent and Child Dependency Representation

- The Oregon State Legislature should allocate the funding necessary for the Public Defense Services Commission (PDSC) and the Office of Public Defense Services (OPDS) to adopt a workload model of contracting with a caseload cap (similar to the Parent and Child Representation Program (PCRP) and the model adopted for parent representation in the state of Washington) for all counties in Oregon.

#### Government Representation

- The Oregon State Legislature should allocate funding to the Department of Human Services (DHS) to leverage federal grant and reimbursement programs to enter into a block grant (or “flat fee”) agreement with the Department of Justice (DOJ) for comprehensive agency representation in dependency cases. Additionally, the Oregon State Legislature should grant position authority to DOJ for the additional attorneys and staff required to implement this model. Nothing in this recommendation should be construed to eliminate “the state” as a separate distinct party in dependency cases, but DHS resources should be directed to the entity that represents the agency.

#### Court Appointed Special Advocates

- Provide funds sufficient to support four statewide CASA Program Attorneys so that CASAs in Oregon have timely access to legal consultation and representation.

## System Improvement Recommendations

### Unlawful Practice of Law

- A model of government representation that provides full representation for the agency will ultimately eliminate the risk of unlawful practice of law by DHS child welfare employees in the courtroom. The Task Force has recommended a model that provides for full representation for DHS.
- Should a model be adopted that does not provide the agency with full representation, the following recommendations will help mitigate unlawful practice of law by DHS employees:
  - All petitions, orders, and judgments must be prepared by an attorney or, if prepared by a non-attorney, an attorney must review, and adopt, the non-attorney's work by signing the document.
  - DHS Employees who appear in court without an attorney should either be sworn-in as fact witnesses or, where a proper foundation has been established, as expert witnesses and present testimony pursuant to the rules of evidence.
  - DHS Employees who appear in court without an attorney should **not** make legal arguments, cite to legal authority, move the court for specific relief, or advocate for a legal position.

### Performance Standards

- Relevant performance standards should be adopted for juvenile dependency attorneys who represent parents, children, and the government. These standards should be regularly reviewed and updated.
- Oregon practitioners, judges, and non-lawyers who participate in the dependency system should be trained in the performance standards for all attorneys in the dependency system.
- Performance standards for all juvenile dependency attorneys should, to the extent practicable, be incorporated into statewide quality assurance efforts.

### Quality Assurance

- Quality Assurance Outcome Measures should be adopted, collected, and reported to assess the effect of the current model of representation and the effect of any changes to the model recommended by this Task Force and implemented by the Legislative Assembly and the Executive Branch.
- Quality Assurance Output Measures should be adopted, collected, and reported to assess the current model of representation and the effect of any changes to the model recommended by this Task Force and implemented by the Legislative Assembly and the Executive Branch.
- A standing workgroup coordinated by the Judicial Department should be formed to meet quarterly, implement the collection and reporting of the recommended quality assurance measures, and engage in a continuous quality improvement process. Resources should be provided to support this workgroup.

### Crossover Cases

- Oregon practice should target crossover youth who have current and simultaneous involvement in the child welfare and juvenile justice system.
- A basic statewide crossover case protocol should be established with technical assistance available to counties that wish to develop a more robust protocol.
- Performance standards and training for all delinquency, dependency, and criminal practitioners should be updated (or developed) to reflect the unique nature of representation in crossover cases.
- OPDS should strive to ensure, where practicable, a one- lawyer-one youth model in crossover cases and identify ways to implement consistent post-disposition representation across the state.

## Task Force Implementation Recommendation

- A volunteer subgroup of Task Force members and stakeholders should continue to meet regularly to implement the recommendations of this report.

## Areas for Further Inquiry

- The Task Force received testimony and presentations on several issues central to the dependency representation system that are in need of further investigation and recommendations, including: increased judicial resources; development of law school programs that foster a dedicated and diverse dependency workforce; reduction in the disproportionate placement of children of color in out-of-home care across the state; and improved compliance with the Indian Child Welfare Act. Improvement in these areas will better ensure the well-being of Oregon children and families.