

Oregon Task Force on Dependency Representation

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

Report July 2016

For more information on the Oregon Task Force on
Dependency Representation visit the Task Force website at
<http://www.oregon.gov/gov/policy/Pages/LRCD.aspx>

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Letter from the Chair

Dependency representation is important and, common misconceptions notwithstanding, can require some of the most complicated and legally challenging work performed by attorneys in our legal system. Dependency cases involve families who are in crisis, a maze of overlapping statutes and multiple sources of law, a sophisticated team of interdisciplinary service providers, and extreme time pressure. These cases pose high stakes and they create high pressure: decisions made in dependency courtrooms across our state have many short- and long-term consequences for Oregon's most vulnerable children and families.

More than 15 years ago, as the federal laws that govern child welfare policy grew more complicated and child welfare practices grew more sophisticated, the notion that dependency court was somehow of lesser stature -- or a "kiddie court" -- could no longer stand. The importance of high quality legal representation in dependency cases became increasingly clear. In that changing environment, questions arose concerning the adequacy of the models that fund, train, and regulate representation for the children, parents, state actors, and CASAs in dependency cases in Oregon. Since then, stakeholders have made numerous attempts to tackle this complicated array of issues, some of which have resulted in small changes and modest improvements, but none have produced the depth or breadth of necessary systemic changes that are recommended in this report. The recommendations of this task force, if implemented, will produce the changes to Oregon's models of dependency representation necessary to allow dependency practitioners and the child welfare system to properly perform their expected roles in this new era of child welfare.

Ultimately, the success of this Task Force and the strength of its recommendations depends on the efforts of child welfare champions from all three branches of the government who have -- and will -- come together, galvanized around two common goals: protecting the legal rights of families and improving outcomes for Oregon's most vulnerable children. These objectives spurred the task force to take a fresh, hard look at the efficacy of Oregon's current representation models and think beyond the status quo. Through a rigorous series of formal meetings, subcommittee processes, court observational opportunities, research work, and practitioner meetings across the state, the Task Force gathered critical information and empirical data, engaged in robust and sometimes difficult conversations, and then drafted, amended, and redrafted recommendations, focusing first and foremost on protecting legal rights and promoting better outcomes for Oregon's children and families.

This task force reinforced the value of three-branch work in the child welfare arena. To truly improve the child welfare system in Oregon, stakeholders from the executive, legislative, and judicial branches must continue to convene to identify, prioritize, develop, and implement changes that support shared goals and better outcomes. The

well being of Oregon's children and families must always be in the vanguard of these efforts. For this reason, the recommendations in this report call for changes in structure and practice across all three branches of government.

This report is a statewide call to action for legislators, judicial officers, department directors, and legal leadership to work toward the implementation of recommendations relevant to their roles in the child welfare system and to continue the collaborative work that this process has set in motion.

It has been an honor to chair this task force and to work with the Governor, members of the Legislative Assembly, and so many committed professionals across the state who tirelessly give their all to help the children and families of Oregon with the greatest needs. We are particularly indebted to the Governor for providing an extraordinary project administrator, Addie Smith, to support this effort. We are also much indebted to Dani Ledezma, the Governor's child welfare policy advisor, for her timely insights, and to Channa Newell, who has provided helpful legislative support.

As the report notes, there are not a few obstacles to the changes that will be necessary to produce the improved outcomes that the public expects from a functional system of dependency representation. However, the benefits to be gained are simply too great to warrant anything other than our unrelenting effort to make necessary change.

Sincerely,

A handwritten signature in cursive script that reads "David Brewer".

David Brewer

Task Force Chair

Executive Summary

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.” It has been the task of this entity to review the current systems and business models used to provide representation for the government, parents, and children in child dependency cases, assess their efficacy, and provide recommendations on how to improve the dependency representation system and related practices in Oregon in order to protect due process and improve child welfare outcomes.

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 this final report 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 in fulfilling its intended purpose and functions:

- 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.
- Obstacles to adequate and effective representation for all parties stand in the way of better outcomes for Oregon’s children and families.
- The state does not provide funding for legal consultation for Court Appointed Special Advocates (CASA) program staff or volunteers.

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.
- provides attorneys with expertise and experience that enables them 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 to be filed with the court.
 - Employees who appear in court without an attorney either should 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.
 - 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 performance standards should be regularly reviewed and updated.
- Oregon practitioners should be trained in the performance standards relevant to their practice and cross-trained in the performance standards relevant to the practice of the other attorneys in the system.
- Oregon judges should be trained in the performance standards for all juvenile dependency attorneys (parent, child, and government practitioners).
- Non-lawyers who regularly participate in the juvenile dependency system, such as Citizen Review Board (CRB) members, CASA, and DHS workers, should receive training on the performance standards.
- Performance standards for all juvenile dependency attorneys (parent, child, and government practitioners) 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 that includes representatives from DHS child welfare, DOJ, OPDS, and the Oregon District Attorneys Association (ODAA) 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 the Judicial Department to coordinate and support the Judicial Department’s facilitation of a standing workgroup with the various representatives. Resources should

also be provided to each entity supervising or coordinating the attorneys who practice in the dependency representation system (DOJ, OPDS, and ODAA) to support workgroup participation and the collection and reporting of quality assurance measures.

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, that a one- lawyer-one youth model is the general practice in crossover cases and identify ways to implement consistent post-disposition representation across the state, including for youth committed to the Oregon Youth Authority.

Task Force Implementation Recommendations

- A volunteer subgroup of Task Force members 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. Improvement in these areas will better ensure the well-being of Oregon children and families, including:
 - Increased judicial resources;
 - Development of, and adequate support for, law school programs that develop a dedicated and diverse dependency workforce;
 - Reduction in disproportionate placement of children of color in out-of-home care across the state; and
 - Improved compliance with the Indian Child Welfare Act of 1978.

Task Force Members

Senate appointed:



Senator Jeff Kruse,
Senate District 1



**Senator Floyd
Prozanski,**
Senate District 4

House appointed:



**Representative
Duane Stark,**
District 4



**Representative
Kathleen Taylor**
District 41

Chief Justice Appointed:



**Honorable Justice
David Brewer,**
Oregon Supreme
Court, **Task Force
Chair**



**Honorable Judge
Patricia Crain,**
Circuit Judge, Jackson
County Circuit Court



**Honorable Judge
Daniel Murphy,**
Presiding Judge, Linn
County Circuit Court



Leola McKenzie,
Director, Juvenile &
Family Court
Programs, Oregon
Judicial Department



Lynn Travis,
Program Director,
CASA for Children
Multnomah,
Washington &
Columbia Counties

Attorney General appointed:



Fredrick Boss,
Deputy Attorney
General,
Department of
Justice



Joanne Southey,
Attorney in Charge,
Child Advocacy
Section, Department
of Justice

Governor appointed:



Clyde Saiki,
Director,
Department of
Human Services



Nancy Cozine,
Executive Director,
Office of Public
Defense Services



Mimi Laver,
Director, Legal
Education, ABA
Center on Children
and the Law



Valerie Colas,
Deputy Public
Defender, Office of
Public Defense
Services



Rod Underhill,
District Attorney,
Multnomah County



Angela Sherbo,
Supervising
Attorney, Youth,
Rights, & Justice



Matt Shirtcliff,
District Attorney,
Baker County

Staffing:



**Adrian (Addie)
Smith,** Task Force
Administrator,
Office of Governor
Kate Brown



Dani Ledezma, Policy
Advisor, Housing &
Human Services,
Office of
Governor Kate Brown

Background

Overview & Process

The 2015 Oregon Legislative Assembly passed Senate Bill 222, establishing the 18-member Task Force on Legal Representation in Childhood Dependency (Task Force). The membership of the Task Force includes stakeholders across the three branches of government and included:

- Two members of the Oregon Senate appointed by the President of the Senate;
- Two members of the Oregon House of Representatives appointed by the Speaker of the House;
- Two Department of Human Services (DHS) representatives appointed by the Governor;
- Two District Attorneys (DAs) appointed by the Governor;
- Three attorneys who provide legal defense services to children and parents in the dependency system appointed by the Governor;
- Three judges with juvenile court experience appointed by the Chief Justice of the Oregon Supreme Court;
- One Court Appointed Special Advocate (CASA) appointed by the Chief Justice of the Oregon Supreme Court;
- One person representing the Citizen Review Board (CRB) appointed by the Chief Justice of the Oregon Supreme Court; and
- Two representatives from the Attorney General's Office.

Recognizing the importance of the Task Force charge, the role of each branch of the government in fulfilling it, and the obstacles presented in multiple previous efforts to address it, S.B. 222 (2015) funded a full-time Task Force administrator position housed in the Governor's office.

The Legislative Assembly clearly and directly addressed the purpose of the Task Force, charging it to:

"[R]ecommend 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 was charged with reviewing the systems that fund, support, regulate, and train the attorneys who represent the government, parents, and children in dependency cases, assessing their efficacy, and providing recommendations on how to change and improve these systems. The Task Force composed a problem statement that identified two principles to guide its work: protecting due process and promoting better outcomes for Oregon children and families. In addition to identifying these shared goals, the statement also outlined the objectives and scope of the Task Force work, including:

- Identification of the obstacles to effective representation for all parties (parents, children, and the government) in dependency proceedings;
- Identification of the benefits of representation for each party in child dependency proceedings;
- Assessment of the current model of representation;
- Evaluation of the role of dependency representation in promoting good outcomes for Oregon children and families;

- Review of models of representation used by other states, recommended by national standard-setting organizations, and piloted in Oregon; and
- Assessment of discrete issues relevant to the overall function of the dependency representation system through a series of subcommittees.^a

To promote these principles and fulfill these legislative directives, the Task Force process unfolded in three phases: 1) gathering information; 2) crafting solutions; and 3) making decisions. This process took place over the course of ten monthly meetings beginning in October 2015, and culminating in July 2016. Seven of the meetings were held in Marion County, and three meetings were held in Multnomah, Linn, and Jackson Counties. While in Multnomah, Linn, and Jackson counties, members met with local practitioners, observed dependency court hearings, reviewed local outcome data, and learned about local practices.

Additionally, the Task Force invited national and local experts to attend its meetings to present on various topics relevant to its charge. Presenters included law professors, parent mentors, foster youth, child welfare workers, district attorneys and deputy district attorneys, defense consortium attorneys, public defenders, assistant attorneys general, and members of the judiciary. Topics covered included:

- Defining the current models of representation;
- Understanding the obstacles and costs to high quality and consistent representation;
- Assessing the role of the dependency system in child welfare outcomes;
- The benefits of high quality and consistent representation;
- Practice differences between Oregon counties;
- Local practices of note;
- Representation models used by other states;
- National best practices;
- The role of the judiciary in an effective and efficient dependency system;
- Disproportionality; and
- ICWA compliance.

Finally, the Task Force reserved a portion of each meeting for public testimony. Citizen stakeholders and representatives from the DHS, the Department of Justice (DOJ), the Oregon District Attorney Association (ODAA), the Marion County District Attorney's Office, Children First for Oregon, the Defense Consortium in Yamhill County implementing the Parent Child Representation Program (PCRP), Metro Public Defenders, Youth, Rights, & Justice, and the Judiciary.

The Task Force also established five subcommittees to address discrete issues raised by S.B. 222 (2015): crossover cases, performance standards, quality assurance/continuous quality improvement, the unlawful practice of law, and alternative models. Local experts and practitioners comprised these subcommittees.^b

Each subcommittee assessed local practices, discussed current efforts to address the issue, reviewed relevant literature, and explored national best practices. Ultimately, each subcommittee, except the Alternative Models Subcommittee, developed a report that included findings and recommendations for the larger Task Force.

At the direction of the Chair, the alternative models subcommittee convened to assess potential new and alternative models for the dependency representation system in Oregon. The charge of the Alternative Models Subcommittee included the following:

“Review the practice, cost, and outcomes of models of representation used by other states in dependency proceedings. Compare and contrast these models of representation to the current

^a See Appendix A for the full text of the Problem Statement and Scope that guided the work of the Task Force.

^b See Appendix B for a chart of Subcommittee scope and membership.

Oregon model. Assess alternative models of representation used nationally or endorsed by standard-setting organizations. Present to the Task Force for further discussion information about what models save cost, protect due process, and promote outcomes. Present to the Task Force for further discussion information about how various models meet the needs and/or unique nature of Oregon dependency proceedings.”

This subcommittee, unlike the other four subcommittees, did not submit a formal report or series of recommendations for adoption by the larger Task Force. Instead, this subcommittee provided investigative support by identifying key attributes of quality models of representation in dependency cases; ranking alternative models of representation to determine the extent to which they exhibited those attributes; and reporting the findings to the full Task Force to inform discussions about the final recommendations for government, parent, and child representation.

The results of this work and the final decisions of the Task Force are presented in this report in the form of findings and the recommendations that grew from the information gathered.

Obstacles to Effective Representation

The dependency representation system in Oregon faces a number of barriers to fulfilling its intended purpose and functions:

- Attorneys representing parents and children have difficulty protecting the rights of their clients when challenged with excessive caseloads and inadequate resources.
- Inconsistent and incomplete state and agency representation models, a lack of uniform practice, and cost drivers pose a challenge to timely and effective case planning and management.
- Obstacles to adequate and effective representation for all parties stand in the way of better outcomes for Oregon’s children and families.
- There is no state funding for legal consultation for CASA program staff or volunteer advocates.

Overcoming these barriers will lead to a more effective and efficient child welfare system across the state.

Obstacles in the dependency representation system in Oregon come in two forms: 1) obstacles that stand in the way of clients (parents, children, DHS, and CASA) accessing legal services; and 2) obstacles that prevent providers—Oregon Public Defense Services (OPDS) Contractors, DOJ and DAs—from providing legal services, with many obstacles equally affecting both access and provision of representation in dependency cases.

Obstacles to Accessing Legal Services

The caseloads of attorneys for children and parents in many judicial districts in Oregon prevent clients from having access to and time with their attorneys. Burdensome caseloads also thwart attorneys’ abilities to accompany parents and children to meetings outside of court that are critical to case resolution. This problem is exacerbated by shortages of qualified attorneys and geographic distance between attorneys, clients, and the court, particularly in rural counties. Some jurisdictions have found access to pre-petition representation (a model that appoints parent/child attorneys after a family becomes involved with the child welfare agency and before a dependency petition is filed) to be a promising practice in dependency representation not provided in Oregon, but worth further exploration.

For DHS, consistency, proximity, and cost are the major obstacles to accessing legal services. As DAs represent the state (and not the agency) until the jurisdiction/dispositional phase is completed (which, under Oregon law, takes about 60-90 days), DHS frequently goes without direct representation until after this initial phase of a case, at which point cost (including travel cost) precludes DHS from obtaining adequate access to DOJ representation. Further, a disruption in the case occurs between the DA appearance when the agency is unrepresented and when DOJ appears on behalf of the agency. This affects the ability of DHS to have quality representation throughout the life of the case, at times appearing without any legal counsel, and may result in delays in services to parents and children in

compliance with state and federal laws. For CASA volunteers, the primary barrier to legal advice and consultation is a lack of dedicated funds.

There also is a need to increase the cultural and linguistic competence, and trauma-informed approach, of the attorneys in the dependency system who provide services to diverse and vulnerable populations—this includes parent, child, and CASA attorneys, and with regard to cultural competence and trauma-informed practice, government attorneys as well. This deficit currently poses another barrier to access.

Obstacles to the Provision of Legal Services

Obstacles to the effective provision of parent and child representation include: funding that is insufficient to support national caseload standards, compliance with Oregon State Bar (OSB) performance standards, and implementation of a multidisciplinary model of practice; a model of contracting that does not adequately compensate attorneys for out-of-court work; case rates that incentivize and, as a practical matter, almost require attorneys to manage high caseloads in order to maintain business viability; the delayed appointment and involvement of attorneys for parents and children; and delayed discovery. High caseloads prevent attorneys from spending adequate time with clients and attending to work outside the courtroom. Where caseloads are excessively high, cases are delayed due to the unavailability of attorneys for regular court appearances.

Obstacles that prevent the provision of adequate legal services by government attorneys include the lack of consistent quality training for DAs and the absence of performance standards or performance expectations and accountability measures for both DAs and the DOJ. Additionally, the challenges posed by the differing and sometimes overlapping roles and responsibilities of the local DA's office and the DOJ, both of whom represent statutory parties (the state and DHS) in juvenile dependency cases, are also an impediment to service provision. This results in different roles, responsibilities, and attorney-client relationships for local DAs and for the DOJ. These obstacles prevent consistent and continuous representation for the state and the agency throughout the life of the case.

Further, the current payment structure still leaves many DA offices under-resourced and therefore involved only in the most limited capacity—prosecuting dependency petitions. In addition, some DA offices have elected to not appear at all or appear only at certain hearings in the jurisdictional phase in a case. Even if the state as a party separate from DHS were funded to be represented, this still leaves DHS without legal counsel from petition through jurisdiction in the majority of counties and creates a risk of legal liability. In addition, as a state agency, the legislature has determined that DHS receives funding to pay DOJ for its services at an hourly rate. DHS is required by statute to utilize only DOJ for legal representation and must authorize and approve the use of DOJ services. At times, financial factors create a disincentive for DHS to consult freely with counsel on many legal issues at the risk of exceeding its budget or are forced to choose between providing services to parents and children and obtaining legal representation. This prevents DOJ from providing critical legal services and leads to legal risk for DHS. Even after jurisdiction DHS often appears in juvenile court without any government attorney to assist in advocating the agency and/or state's legal position.

Obstacles Due to an Overburdened Court System

Another obstacle that stands in the way of the effective provision of legal services is the degree to which the entire juvenile dependency court system is overburdened. This has led to overcrowded and sometimes inefficient court dockets; inconsistency among courts with regard to the types, timing, and frequency of hearings and trials; shifting of traditional court work to attorneys; under-utilization of technology, and a general inability to schedule hearings in a timely manner.

Benefits of Effective Representation

Child welfare is a hybrid system of social work and law. For this reason, attorneys have a unique and vital role. Attorneys highlight legal issues that arise both in the courtroom and during case management, promote lawful interventions, and protect the rights, safety, and well being of Oregon children and families. High quality legal representation is essential to a well-functioning dependency system.

High quality legal representation provides the following benefits:

Representation Promotes Fairness and Due Process in the Dependency System

The ability to obtain access to a skilled advocate is the cornerstone of a fair and just court system. The constitutional and statutory rights of parents and children involved in the dependency system must be protected. Similarly, the court system has a statutory obligation to ensure that Court Appointed Special Advocates (CASA) are appointed to represent children's best interests in dependency proceedings. Consistent and effective legal representation preserves the due process rights of parents and children, prevents government overreach, supports lawful casework practice, and protects Oregon families' basic civil liberties. Representation ensures that marginalized and disenfranchised Oregonians' voices will be heard in the courtroom and the child welfare process. It also promotes fairness by insisting on consistent experiences for children and families in courts and the child welfare system across the state. Legal representation for the agency enforces consideration of those constitutional rights and compliance with state and federal laws.

Representation Protects Children and Improves Outcomes for Families

Consistent and effective representation for parents, children and the agency (in Oregon, DHS) has been shown to improve outcomes for children. Recent studies have shown that adequately resourced and competent representation for parents and children decreases the time to permanency for children in the child welfare system and reduces the use of foster care. In addition, consistent and effective representation for parents and children has been shown to decrease unnecessary removals, increase placement in kinship care, and provide important opportunities to meaningfully decrease disproportionality. CASA participation leads to similar outcomes.

Representation Provides Important Short-Term and Long-Term Cost-Savings

Consistent and effective representation offers an opportunity for short-term and long-term cost savings for the State of Oregon. Substitute care is an expensive intervention (costing, on average, more than \$26,000 per year per child^c) with additional long-term costs for the State of Oregon. Children who have been placed in foster care are more likely to be homeless, un- or under-employed, enmeshed in the delinquency and criminal justice systems, and more likely to suffer long-term physical and mental health needs. They are also less likely to graduate from high school or to receive a college education. As discussed above, consistent and effective representation for parents and children, as well as consistent presence of a CASA, have been shown to reduce the incidence of unnecessary removals and decrease the time in out-of-home care. By decreasing the number of children in care and the time a child spends in care, consistent and effective representation, in turn, decreases these short- and long-term systemic costs.

Consistent and effective representation for the agency will decrease caseworkers' legal responsibilities, freeing their time to focus on case work and increased client engagement. In addition, some caseworkers report that attending court is an extremely stressful experience that could be mitigated by consistently appearing in court with counsel. Decreasing this stress could also improve case worker morale, and decrease costly caseworker turnover. Consistent and effective legal representation for the agency has the potential to decrease state liability by providing DHS with oversight and consultation that, in turn, may protect the agency from the risks and costs of tort litigation.

^c This cost figure includes not only room and board, but personal care services, one-time payments, and staff time but does not account for court costs, legal representation, and other system costs.

Dependency proceedings have become increasingly complex, and skilled representation for all parties promotes important cost savings associated with the efficiency that representation can provide. Courtroom efficiency saves already overburdened judicial resources. Legal consultation for CASAs increases their capacity to effectively communicate recommendations and investigative findings related to the child's best interests.

Representation Ensures that Lawful Decisions about Oregon Families are Made Based on the Best Possible Information

Consistent and effective representation empowers parent and child clients to meaningfully engage in the dependency process. Attorneys translate the complicated dependency system and break down decision-points into approachable choices, so that parents and children can make informed decisions throughout the course of the case. This ensures that the court will hear the perspective of parents and children. In addition, empowered clients are more likely to feel that they are being treated fairly, that the system is working with them as opposed to against them, and to engage in the dependency process and accompanying services. This promotes better outcomes for children and families.

Agency attorneys assist caseworkers in understanding the legal aspects of the dependency system and the need to build a strong legal foundation for each case management decision. Consistent and effective agency representation also increases caseworker accountability, promotes lawful practices, and mitigates the stress and administrative burden of managing complex legal filings, issues, and court proceedings. Additionally, agency attorneys provide uniformity of pleadings and legal arguments, providing consistency for families statewide. All of this frees non-legally trained workers' time for good case management practice and client contact. State attorneys provide an additional unique local community perspective and an independent legal voice to dependency cases that focuses on child safety. In the same way, legal consultation for CASAs will promote uniform state practices and will increase efficiencies with local programs.

Thus, having attorneys for all parties ensures that the best available and most balanced information is presented to the court. In addition, attorneys play an important role in ensuring that at each hearing a complete record is before the court, the most accurate findings are made, and that judgments are legally sufficient to ensure the best record for appeal. Legal representation promotes a strong healthy adversarial system and ensures that the court receives information needed to make well-informed decisions for children and families at both the trial and appellate levels in Oregon courts.

Attorneys are Experts who Champion and Support System Improvements

Attorneys play an important role in child welfare system improvement. Courtroom advocacy at the trial and appellate levels not only protects the rights of individual clients, but also holds the child welfare and dependency system accountable. Courtroom representation creates needed systemic changes and clarifications with both far-reaching and immediate impacts. Attorneys are also advocates outside the courtroom; they use their deep understanding of the system and the challenges that their clients face to develop community connections and promote meaningful and effective policy improvements at the local and statewide levels.

Findings and Recommendations

Findings & Recommendations: Dependency Representation Models

Over the past two decades, scholars and practitioner experts have found that “quality representation and due process for all parties in the child welfare system are essential but not always achieved.”¹ In Oregon, it is not uncommon for one or more of the parties in a dependency proceeding to have inadequate representation—or no representation at all—during a dependency proceeding. Yet, few legal proceedings immediately affect an individual’s rights more than a juvenile dependency case where children are removed from their parents and placed in out-of-home care—an intervention with long-lasting effects on a child’s well-being. High quality and consistent legal representation for the government, parents, and children is essential for a fair and efficient legal process,² especially as the laws, policies, and judicial decisions that govern child welfare in Oregon become increasingly complex. Recognizing the benefits that attorneys provide to the child welfare system and, more specifically, the dependency system, the Task Force recommends the following strategies to improve the models that fund, support, and regulate dependency representation and to diminish obstacles to quality, consistent representation.

Representation for Parents and Children

1. Findings

A national consensus is emerging: high quality and consistent legal representation for parents and children is necessary to ensure that these parties can navigate and meaningfully participate in dependency proceedings. The role of attorneys for parents and children in the child welfare system is a critical one. Parents’ and children’s attorneys serve as guides, translators, voices, and systemic counter-balances. For example, nationwide, 70% of the children in foster care are removed because of allegations that they were neglected, not abused,³ and reliable data suggests that in many of these cases the children should never have been removed from their families.^d To fulfill their role, parent and children’s attorneys must ensure that the voices and experiences of children and families are presented in the courtroom and decision-making meetings and that children face the trauma of removal only when absolutely necessary for their safety and well-being.

Robust parent and child representation is correlated with improved outcomes for children and families. An attorney’s advocacy for frequent visitation, family involvement, and the right service plans engages parents⁴ and steers the case toward timely reunification.⁵ More specifically, parent and child representation has been shown to:

- families receive more appropriate services and unnecessary removals are reduced;⁶
- decrease time to reunification;⁷
- decrease re-entry post-reunification;⁸ and
- decrease time to other forms of permanency.⁹

^d According to federal statistics, more than 86,000 children removed across the country in 2009 were later found not to have been maltreated. MARTIN GUGGENHEIM & VIVEK S. SANKARAN, REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS 21 (2015).

These improved outcomes, in turn, create cost savings and cost efficiency for states. In New York, one representation program was found to save \$9 million per year by reducing the length of stay in foster care and promoting safe reunification with parents,¹⁰ while a model representation program in Washington State saved \$7.5 million in one year by reducing foster care stays.¹¹

Nonetheless, concerns about the quality of representation for parents and children in dependency cases in Oregon's juvenile courts have existed for many years. In 2000, the *Oregon State Bar's Indigent Defense Task Force III Report* found juvenile dependency representation severely lacking, noting that clients needing juvenile dependency representation faced "an unreasonable likelihood of receiving poor representation."¹² In 2004, a Secretary of State audit reported an above-average risk of inadequate representation in juvenile cases.¹³ In 2005, a legislative child welfare "sensitive case review" identified inadequate legal representation as a serious concern.¹⁴ As a result, the review recommended the appropriation of an additional \$23 million to the Public Defense Services Commission for the purpose of "improving legal representation for parents and children in dependency cases, including, but not limited to, improving training, support and other resources to support court-appointed counsel."¹⁵ Although this funding was not approved, the Public Defense Services Commission has made significant efforts to address quality concerns through training and contractual requirements. The lack of funding, however, yields excessive caseloads for parent and child dependency practitioners because the agency is unable to update its contracting model and associated structures.

Despite these challenges, Oregon has piloted a PCRCP in three counties. This OPDS-initiated and legislatively funded program ensures reduced caseloads, increased attorney accountability, and provides access to multidisciplinary staff and assistance. Initial data already shows signs of improved outcomes and cost efficiencies in the counties where it has been implemented:

- **Reduced Rate of Foster Care:** The initial two PCRCP counties had an average foster care reduction rate of 19% in 2014 and 13% during the first six months of 2015, compared to a statewide decrease of 4.33% in 2014 and a statewide increase of 0.44% during the first six months of 2015.¹⁶
- **Increased Reunification Rate:** In the initial two PCRCP counties, from 2014 to June 2015, the rate of reunification increased by 6.5% while the increase was 1.7% statewide.¹⁷

Although the PCRCP is one of several child welfare practice changes in these counties, these improved outcomes mirror the findings in other jurisdictions that have implemented PCRCP-like programs and highlight the important due process rights that parent and child attorneys protect. National best practices and successful models employed by other states show the nexus between high quality and consistent practice and these results.

A. Models of Parent and Child Dependency Representation across the Country

In 2009, the ABA Center on Children and the Law (ABA Center) collected qualitative descriptions of promising parent and child attorney models used across the country.¹⁸ Finding that "[a]s the dependency system grows more complex, a variety of models that provide quality legal representation for parents and children have evolved to protect the rights of parents and promote better outcomes for children,"¹⁹ the research describes three basic representation models for parents and children in use across the country:

- **Institutional parent representation organizations:** offices with a full-time staff of attorneys, social workers, peer parent advocates, and investigators;
- **Contract or panel systems of representation:** a panel of contract attorneys who meet education requirements and mandatory practice standards, are compensated for out-of-court work, and who have access to social workers, investigators and experts; and
- **Hybrid parent representation offices and contract/panel systems:** a panel or list of contract attorneys who handle the majority of the parent representation, and a state or county office with full time staff who may handle some direct parent representation, oversee admission onto the panel, provide and oversee attorney education, and administer an attorney review process.²⁰

In both 2011²¹ and 2015,²² the ABA surveyed states to learn how different models of parent representation are funded with similar results. The 2015 study presented the following findings.

- Payment on an hourly basis (51%)
- Salaried through an organization (37%)
- Annual or periodic contract (26%)
- Per case (17%)
- Per hearing/event (9%)
- Other: (9%)²³

Despite the different models and payment methods, a review of models of representation used across the country, published academic literature, and the recommendations of national standard-setting agencies, highlights the following characteristics of parent and child representation systems that promote quality representation:

- Mechanisms or models that control attorneys' caseloads are one of—if not the—most important components of strong models of parent and child representation.²⁴ Moderate caseloads and caseload limits give attorneys sufficient time to meet with and counsel their clients, attend out-of-court meetings, and prepare for court hearings, all essential components of quality representation.
- Directly related to caseload control is the need for cost effective and cost efficient funding mechanisms that account for the actual amount of work it takes to manage a complicated dependency caseload.²⁵ National experts report that ineffective funding models and obstacles to adequate funding "result in parents not always receiving the high quality representation they need to ensure the best outcomes for their children and families."²⁶
- In comparison to county-administered programs, state-administered models better promote consistent practice across the state.²⁷ The 2015 ABA Center study found that in 39% of states funding is state administered, in 15%, funding is county administered, in 2%, funding is administered by judicial district, and 44% of states have hybrid funding systems.²⁸
- Continuity of representation for parent and child clients—where a client has one attorney from before the shelter hearing through reunification or permanency (i.e., throughout the life of a case)—yields better results and promotes procedural justice.²⁹
- National best practice models for parent and child representation include attorney access to, and use of, multidisciplinary staff, including social workers, investigators, and parent mentors.³⁰ In 2015, the ABA Center assessed the availability of multidisciplinary staff to parents' attorneys across the country and found states, law firms, and defense offices moving toward multidisciplinary models: 16% of respondents had access to parent mentors, 34% had access to social workers, 25% had access to investigators, and 25% had access to other types of support.³¹
- Research and national best practice models highlight the value and role of institutional parent and child representation offices, whether governmental or non-governmental, these offices provide important opportunities to regulate the quality of practice within their organizations and to provide training, consultation and leadership among the attorneys representing parents and children across a jurisdiction.³²
- Pre-petition attorney representation is a promising new practice that is gaining national attention. In jurisdictions where pre-petition representation is available, parents and children are provided attorneys when the state first engages with the family and signals that there is a risk of potential future removal, even if this is before court involvement. Initial data and analysis find that pre-petition representation can be an important tool for strong models of parent and child dependency representation.³³

- Providing attorneys to work with parents (and in certain instances, children) on collateral issues that may affect the dependency case (such as custody, divorce, housing issues, etc.) is a component of quality representation often found in the most successful national models of parent representation.³⁴

It was in light of these findings on national models and model attributes that the Task Force assessed Oregon's current model for parent/child representation.

B. The Model of Parent/Child Representation in Oregon

The Office of Public Defense Services, a state agency, enters into two-year contracts with local entities for the provision of public defense services. The local entities may be law firms, non-profit public defenders, or consortia groups. All contracts for juvenile dependency representation, with the exception of the Parent Child Representation Program (three counties are currently participating in the PCR program described above- Linn, Yamhill, & Columbia), are based on the case credit model. The case credit model has been the primary contracting model since the early 1980's when the State Court Administrator's office assumed statewide responsibility for appointment of counsel in public defense cases.

In juvenile dependency cases, most contractors receive a case rate that covers the period from appointment through the establishment of jurisdiction until the first post-dispositional hearing (approximately, the first six months of the case). Thereafter, contractors are paid only for review hearings, including permanency hearings and Citizen Review Board hearings, or when appointed on the filing of a termination of parental rights (TPR) petition.

In this model, non-profit public defender offices and some law firms provide investigative services to their attorney employees through staff investigators. Attorneys at non-profit public defender offices follow office protocols to access investigative resources. Attorneys who are part of a consortium and most law firm attorneys access investigator funds through the OPDS non-routine expense request process. To qualify for funding for investigation, the attorney must submit documentation to OPDS showing that the resource is both necessary and reasonable. OPDS reviews these requests and authorizes funding when the necessary and reasonable threshold is met.

The total number of juvenile dependency case credits for proceedings handled by attorneys representing parents and children in 2014 was:

- Appointment through disposition: 7,535
- Post-dispositional proceedings: 39,973
- TPR proceedings: 1,038

Average Contract Rates (for the 2016-2017 contract cycle)^e:

- Appointment through disposition, dependency: \$830
- Post-dispositional proceeding, dependency: \$339
- TPR proceeding: \$2,711

The total budget for juvenile representation in 2015/2017 was \$52 million. That amount provides minimal compensation for over 300 attorneys representing parents and children across the state of Oregon and provides modest additional resources for investigators, experts, and litigation support as needed.

C. Attributes of a Quality Parent/Child Representation System

The Task Force reviewed models of representation used across the country, surveyed published academic literature, investigated the recommendations of national standard-setting agencies, and examined successful strategies of parent/child representation used in Oregon in order to identify ten attributes of quality systems of parent/child representation. Four of these attributes were deemed critical to improving

^e This contract rate is intended to cover all costs of representation (attorney compensation and benefits, staff salary and benefits, and overhead).

Oregon’s dependency representation model. These attributes, identified below, guided the decision-making process that led to the ultimate recommendation of the Task Force.

Priority attributes for high quality representation:
Availability- Attorneys have sufficient time to meet the needs of clients, the court and other stakeholders. This promotes good client-directed legal work, client engagement in the dependency process, and more efficient case resolution.
Consistency- Oregon families receive consistent standards-based, competent legal representation. Quality assurance and accountability are present.
Manageable Caseloads- Attorneys are not overburdened and have the time and resources to adequately prepare for court and provide strong advocacy in and out-of-court. This promotes better legal work and timely resolution of dependency cases.
Outcome-Oriented Practice- The model has been shown to play a role in the larger child welfare system that improves outcomes for children and families. Stakeholders in the dependency system must not only do their utmost to fulfill their distinctive roles but must all work collectively (where legally possible and feasible) toward the common goal of improved outcomes for Oregon children and families.
Attributes also important to high quality representation:
Continuity- Consistent legal representation throughout the life of a case and throughout a client’s involvement with the juvenile court system (one lawyer- one client). This is a best practice and supports a better attorney-client relationship for parents and children.
Cost-Effective/Cost-Efficient - Cost-effective services ensure that funds are spent to support necessary value-added services that protect the rights of children and parents. Cost-efficient services ensure that legal services are being provided in a manner that takes advantage of available economies of scale, process efficiencies, and technological advances, in addition to decreasing unnecessary transaction costs. These attributes collectively ensure that quality legal services are provided without excessive cost.
Local Community Connection- Attorneys are located in the community, know local practitioners, and have strong working relationships with the local court, DHS caseworkers, and service providers. This enables attorneys to be culturally responsive, understand community values, and understand effective local practice.
Multidisciplinary Representation- All lawyers have access to investigators, experts, and to teams of practitioners that engage and support parents and children, including case managers and peer mentors. Lawyers have access to adequate staff support, such as paralegals. Access to a multidisciplinary team ensures that parents’ attorneys are able to focus on representing their client, have the expertise necessary to build strong cases, and have the support to engage in case plans and court orders.
Duration of Representation- Attorneys are available pre-petition. The availability of attorneys for parents and children pre-petition protects parents and children’s due process rights, promotes the most appropriate state interventions, and maximizes the efficient use of judicial resources. Attorneys are available for children in voluntary substitute care placements. Attorneys are only appointed once for the duration of a case from pre-shelter hearing through TPR, should TPR occur.

Scope of representation- Appropriate performance standards suggest that lawyers representing children should, when necessary, expand the scope of representation either personally or through an appropriate referral on issues which do not specifically arise from the court appointment. Lawyers for parents should be aware of collateral issues and, to the extent possible, counsel the client on advocacy options. This promotes strong attorney-client relationships and promotes timely resolution of the corresponding dependency cases.

2. Recommendations

Recommendation: Expand workload model of contracting with case cap (PCRCP) to all counties in Oregon. The Oregon State Legislature should allocate the funding necessary for the Public Defense Services Commission to adopt a workload model of contracting with a caseload cap (similar to the PCRCP model currently in place in Yamhill, Linn, and Columbia County and the model adopted for parent representation in the state of Washington) for all counties in Oregon.

The PCRCP, an Oregon model based on national best practices, has already been established in three counties and has shown first-hand how a workload contract model for public defense services in juvenile dependency proceedings can improve practice, promote better child welfare outcomes, and offer opportunities for long-term cost savings. Additional investment in the OPDS budget will provide adequate funding to continue rollout of the PCRCP. This investment will give OPDS the means and structure necessary to repair its outmoded parent and child contracting model to address the associated structural issues, ultimately ensuring that parents and children receive the attention and legal services they need in these important cases.

Government Representation

1. Findings

The child welfare system is an amalgam of social work and law. For this reason, a clear definition of the social work and legal roles in dependency cases is necessary to best promote and achieve social services goals, effectively educate the court, and work with children and families.³⁵

It has been well documented that there is a deep, inherent division between the fields of social work and law, and between social workers and attorneys. Social workers and the agency utilize conciliatory methods, working with the client in a cooperative effort to achieve goals and solve problems for individuals and families. In contrast, attorneys and the courts utilize the adversarial process to find the truth, resolve disputes, and make decisions concerning the parties involved in civil child protection proceeding. This stark difference in approach to resolving problems of individuals and families in the child welfare system can lead to a substantial degree of misunderstanding and miscommunication. When an agency attorney is not present at court hearings, or is present but does not protect or support the social worker in the court process, good social work practice is often forfeited. In the rough-and-tumble arena of an adversarial court proceeding, the social worker is often intimidated by opposing attorneys, both outside and inside the courtroom, and by the judge in the courtroom, into giving up very quickly on well thought-out components of the proposed case plan for the child and the family.³⁶

Concerns about the model of representation for the government in dependency cases and its effects on child welfare outcomes in Oregon are well known. The 2013-14 Interim Task Force on Juvenile Dependency Proceedings Final Report summarized these issues:

“The lack of consistent legal representation of DHS Child Welfare in court is another contributing factor to permanency delays. DHS caseworkers often appear in court without legal counsel. There is inconsistency among the counties on the role of the district attorney’s office in these cases and in

terms of the type and frequency of appearances by an assistant attorney general. Issues occur when cases are delayed due to DHS caseworkers being unable to adequately address their legal position or present their case.”³⁷

Little study has been done on how legal representation is provided for the government in child welfare cases.³⁸ But initial studies show that attorneys for the agency can play an important role in promoting good outcomes for children and families in the child welfare system.³⁹ The Task Force, therefore, had to gather data and information on this topic to fill the gaps in the literature.^f

A. Models of Government Dependency Representation across the Country

In an effort to better define the role of the government attorney in dependency proceedings, the ABA Center and national practitioner experts have crafted a set of Performance Standards for Government Attorneys in Child Dependency Proceedings (Standards) designed “to improve the quality of child welfare agency representation and uniformity of practice throughout the country.”⁴⁰ These standards define an agency attorney as “[a]n attorney who is an employee or contractor with the government who is charged with the responsibility of initiating proceedings on behalf of the government or the people to protect abused and neglected children.”⁴¹ In the standards, the ABA Center summarizes the two basic models of government representation as follows:

“Agency Representation Model: Under this model, the agency attorney represents the agency as a legal entity, much the same as in-house counsel’s role in representing a corporation. The attorney could be an employee of the agency or of another governmental body, but the agency is clearly the defined client. Some of the benefits of this model include:

- *reliance on the agency’s familiarity with a child and family in decision making;*
- *value placed on the agency’s expertise in making decisions regarding the safety, permanency, and well-being of children and on the lawyer’s legal expertise in legal matters;*
- *consistent decision making and interpretation of laws;*
- *legal action supported by caseworker opinion, thus boosting caseworker credibility in court, for example, in deciding when to file an initial petition; and,*
- *the attorney is very familiar with the agency and its practices and policies.*

One drawback to this model is that caseworkers may believe the attorney represents them personally rather than the agency as a whole. While in practice this may generally be true because the caseworker is the voice for the agency in court, the agency attorney must clearly communicate that he or she represents the agency as an entity and should use a conflict resolution system when the caseworker’s opinion varies from agency policy or the attorney has reason to question the caseworker’s decision.

Prosecutorial Model: Under this model, an elected or appointed attorney (or the attorneys working for this individual), often a district attorney or county attorney, files petitions and appears in court on behalf of the agency, and represents the state or “the people” of the jurisdiction. This may mean the elected attorney may override the views of the agency in court. One positive aspect of this model is that the attorney may be more in tune with the wishes and beliefs of the community and how the community feels about handling child welfare cases. Concerns with this model include:

^f In consultation with national experts the Task Force staff, designed a survey distributed to all 50 states; 31 states responded. Task Force staff then followed up this survey with formal structured interviews with managing government attorneys in five states that had been identified by court improvement administrators as having effective systems of government representation. The results of this work are cited throughout this report. at 14. See TASK FORCE ON LEGAL REPRESENTATION IN CHILDHOOD DEPENDENCY, GOVERNMENT ATTORNEY STRUCTURED INTERVIEWS (2016) available at http://www.oregon.gov/gov/policy/Documents/LRCD/Meeting8_051116/Alternative_Models_Materials/State_Attorney_Manager_Interview_Results.pdf;

- *the caseworker is often the only party in court without an attorney speaking for him or her;*
- *the caseworker's expertise may be ignored, as the attorney has the ultimate say;*
- *the attorney may be handling all the business for the community and therefore not be able to specialize in child welfare law;*
- *political agendas may play a large role in decision-making;*
- *the agency as a whole may not be getting legal advice on policy issues;*
- *the attorney's personal beliefs about issues such as permanency rather than caseworker expertise dictate what will happen for a child; and,*
- *potential conflicts of interest may arise, such as when the prosecutor is pursuing delinquency petition against a child who is in the agency's custody.*^{42g}

In conjunction with these descriptions, the ABA Center provides the following commentary:

"No matter what model of representation, it is essential that the agency attorney and agency communicate clearly about which model applies. Each should understand who makes the ultimate decisions in different circumstances and there should be a method for resolving a decision making conflict, should it arise. In each model, there will be times when decision-making roles are unclear and open communication is essential. The agency attorney and agency should understand the attorney's role and responsibilities concerning advising and protecting the agency on liability issues.

Additionally, no matter which representation model is used, the agency attorney must understand his or her role with respect to private agencies with whom the agency contracts. The most important issues are that children are safe, their needs are met, and their families are treated fairly.

The drafting committee of these standards recommends the agency representation model. However, state legislation may dictate what model each attorney must follow. States are cautioned against developing hybrid models which incorporate elements of both the agency model and the prosecution model of representation because of the inherent risks of conflict such hybrid models could create for attorneys. These standards apply to all agency attorneys, no matter what model they use for representation."⁴³

The excerpt and commentary from the ABA Standards is consistent with the findings of the few assessments and scholarly reviews of agency representation that have been completed in the last two decades.⁴⁴ Of note is the only empirical study completed on government agency models. This 2003 study compared two models for representing the government. In one model, assistant district attorneys represented the state, and in the other model "project attorneys" were employed to represent the agency.⁴⁵ The study found that when the agency was represented by project attorneys, there were consistently more court hearings, and case workers were well prepared for these hearings.⁴⁶ This finding is significant because complementary studies find that a higher frequency of judicial involvement is a predictor of quicker case resolution (reunification or TPR occur more quickly with increased judicial oversight). Thus, (1) the degree of judicial engagement and (2) whether the attorneys were DAs or project/agency attorneys, were the most important factors in determining how quickly cases proceeded when the agency sought TPR. In counties where the court was active, there was no significant difference in time to TPR/permanency. However, in counties where the court was not particularly engaged in child welfare cases, the project/agency attorneys helped achieve TPR/permanency 250 days sooner than DAs.⁴⁷ The study did not find any other statistically significant differences in case outcomes tied to the attorney representation model; however, the results showed that case workers overwhelmingly preferred the

^g The Task Force acknowledges that the form of practice by DAs throughout Oregon is not necessarily consistent in all respects and that the ABA 2004 report cited here, does not necessarily accurately describe the Oregon practice in all counties.

project attorney model over the DA model, because they developed better relationships with the attorneys and therefore received more help and guidance as they managed their cases.⁴⁸

In 2009, the ABA Center conducted the most comprehensive review of state government attorney practice to date.⁴⁹ Of the 45 jurisdictions which responded to the question of how the state organizes representation for agency attorneys, "80% (36 of 45) of the jurisdictions reported that the agency attorney represents the agency and 20% (9 of 45) that they represent 'the people.'"⁵⁰

In October 2015, staff for this Task Force updated the ABA Center survey. The majority of the 31 states that responded use an agency model. The specific results were fairly consistent with the 2009 ABA Center study:

- Agency Representation: 26 (83%)
 - In-House Counsel: 7
 - Attorney General's Office: 9
 - District or County Attorney's Office^h: 7
 - Mixed Model by County (DA/AG/In-House/Contract): 3
- Prosecutorial Representation: 3 (10%)
 - District/County/Prosecuting Attorney's Office: 3
- Hybrid Systems (½ Case Prosecutorial/ ½ Case Agency): 2 (7%)
 - District Attorney then Attorney General's Office : 2

Of the 26 states that defined their model as an "agency model," 8 reported either that the state was the agency (that these roles could not be bifurcated) or interpreted their state's authorizing statute for government representation to include a dual mandate (a requirement that state attorneys both represent the agency and also protect the well-being of the children or "the people" in the state).

This survey found that funding mechanisms across these jurisdictions varied with the most common mechanisms being a flat fee transfer from the agency to the legal provider or individual county funding:

- Child Welfare Budget Line Item (either for in-house counsel or flat fee transfer to legal service provider): 11 (35%)
- Attorney General Budget Line Item: 4 (13%)
- Attorney General Bills Agency by Hour: 4 (13%)
- District/County Attorney Budgetⁱ: 12 (39%)

Regardless of the model, payment method, or entity providing services, studies of successful models for government representation described by national standard-setting agencies and seen nationwide highlight the following key aspects:

- Consistent, continuous, and comprehensive legal representation forms the foundation of good government representation under the ABA Center standards. The standards require government attorneys to (1) protect and promote the agency's credibility,⁵¹ (2) advise and counsel the agency on all legal matters,⁵² (3) prepare or review the initial petition and all subsequent pleadings,⁵³ (4) be prepared and present at all hearings,⁵⁴ (5) promote timely hearings and avoid unnecessary continuances,⁵⁵ and (6) review court orders with the agency to ensure accuracy and clarity and ensure agency compliance.⁵⁶ All of the states that Task Force staff interviewed described consistent, continuous, and comprehensive systems of representation where one entity represented the state in the majority of cases, most attorneys carry cases from start to finish, and attorneys provide advice and counsel to the agency on all legal matters.⁵⁷ Further, these

^h This was more frequent in states that have county-administered child welfare programs than those with state administered programs like Oregon.

ⁱ This was more frequent in states that have county-administered child welfare programs than those with state administered programs like Oregon.

interviews found that: “All of the states had ‘open door’ policies where case managers were encouraged to reach out to attorneys at any time and for any reason. Each state reported that this practice promoted lawful case decisions and saved the agency, and the attorneys, substantial time and money by preventing unnecessary mistakes and improving case decisions.”⁵⁸The Task Force survey found that only three of 31 states regularly allow caseworkers to attend court hearings without an attorney present, only two of 31 states switch legal entities representing the government mid-case, and only three states use different legal entities to represent the agency in different counties.⁵⁹

- Attorney availability to case workers is essential to a strong system of representation and a well-functioning dependency system. The government attorney’s “job extends beyond the courtroom. The attorney should be a counselor as well as litigator. The [government] attorney should be available to talk with caseworkers to prepare cases, to provide advice about ongoing concerns, and provide information about policy issues. Open lines of communication between attorneys and caseworkers help ensure that caseworkers get answers to questions and attorneys get the information and documents they need.”⁶⁰ The importance of attorney availability was a frequent focus of comments from managing attorneys from other states. Interviewees noted that attorney availability decreased conflicts and built an “important friction” into the attorney-agency relationship that ensured that the decisions made in a case balance the best social work practice with the requirements of the law—leading to better outcomes for children and families.^j Additionally, as mentioned above, caseworker satisfaction has been shown to improve with access to representation which has the potential to reduce costly case worker turn-over.^k
- Manageable caseloads lead to good legal practice, strong attorney-agency relationships, and therefore a quality system of representation. The U.S. Department of Health and Human Services (USDHHS) recommends that the government attorney be responsible for no more than 100 *children*,⁶¹ and the ABA Center recommends no more than 60 *cases*.⁶² In the Task Force interviews, managing attorneys described caseloads that ranged from 40 to 250.⁶³ Managers described lower caseloads for attorneys who had to travel long distances to attend court hearings and/or staff cases with agency workers. High caseloads were considered a big challenge to quality representation and were most frequently described as the product of inadequate states budgets.

^j As described by one attorney manager:

“Our model has huge pluses- it really almost compels close interaction between the attorney and the case worker. Working hand in hand creates an important friction. It is a forced marriage of the legal requirements with social work practice, forcing careful work with children and families. Our boss is our client, so it has this built-in tension because we are still beholden to professional responsibility (our attorneys must certify that a petition is in the best interest of the child as a legislative requirement) and the wishes of the client. Thus, attorneys and social workers are forced to come together. This friction is structural and it works very well – the relationship can’t be ignored or dismissed, and the friction is very constructive.”

See TASK FORCE ON LEGAL REPRESENTATION IN CHILDHOOD DEPENDENCY, GOVERNMENT ATTORNEY STRUCTURED INTERVIEWS 13 (2016) available at http://www.oregon.gov/policy/Documents/LRCD/Meeting8_051116/Alternative_Models_Materials/State_Attorney_Manager_Interview_Results.pdf.

^k One study found that:

“In all counties, the agency social workers who worked with both the local assistant prosecutors and the project attorneys [representing the agency] overwhelmingly favored the project model....When asked who helped the most, the social workers in all counties overwhelmingly designated the project attorneys, with no social worker choosing the local assistant prosecutors. Therefore, even though the project attorneys aggressively and candidly advised the social workers in an effort to get them to make timely permanent placement decisions, the close team relationship formed between the two types of professionals allowed the project model to be perceived very positively by the agency social workers.”

David J. Herring, *Legal Representation for the State Child Welfare Agency in Civil Child Protection Proceedings: A Comparative Study*, 24 U. TOL. L. REV. 603, 673-74 (1993).

- Cost effectiveness and cost efficiency are key to supporting a better child welfare system as a whole.⁶⁴ Cost-effective and cost-efficient systems are systems that not only have adequate resources, but also have predictable budgets.⁶⁵ Managing attorneys interviewed stressed that an advantage of block grant funding is that caseworkers never felt restrained from requesting legal advice and counsel.⁶⁶ Alternatively, cost-effectiveness may be improved when the same attorney has both civil and criminal authority. “This structure has the potential to preserve tremendous resources in terms of time, energy, manpower, and supplies, as well as to reduce the processing time of each respective case,” when consideration of relevant ethical standards is taken into account.⁶⁷
- Local community connection brings an important perspective into the courtroom.⁶⁸ Managing attorneys surveyed by the Task Force staff agreed that local community connection is important to effective government representation. They described their offices locations as in or near to the communities, agency offices and courts where they regularly appeared.⁶⁹ The Task Force survey found that nationwide, most government attorneys in child welfare proceedings are located near the judicial districts in which they practice.⁷⁰ Further, when agency attorneys were not also district attorneys, surveys and interviews indicated they were often co-located with the agency to save costs and to promote local community connection.⁷¹
- Services and outcomes for children and families are improved when the representing attorney knows the mission, values, and policies of the agency. Studies indicated improved outcomes when attorneys work for the agency.⁷² Further, managing attorneys in the Task Force survey indicated that working toward the common goals of safety and permanency improve services and outcomes for children and families.⁷³

B. Current Model of Representation in Oregon

The current model of government representation in dependency proceedings in Oregon is a hybrid model. DAs represent “the state” at jurisdictional hearings in the majority of counties. Although, in the majority of counties, DA do not attend shelter hearings, in approximately 60% of the counties, DAs either write or review petitions. Some DAs also consult with DHS on cases that have not yet been filed. DAs do not have an attorney-client relationship with DHS. As the sole exception, the Multnomah County DA has an intergovernmental agree (IGA) to litigate TPR trials.

The variance in practices, staffing, and budgets makes it impossible to determine an “average caseload”; however, data collected shows that attorneys are likely managing well above the ABA Center recommended 60 to 80 cases at any given time, understanding that these cases are short in duration (it takes between 60 to 120 days on average to achieve jurisdiction).

DAs are funded through a limited supplemental grant program, Title IV-E reimbursement contracts, and a Multnomah specific TPR IGA. Twenty-one DA Offices have Title IV-E agreements with DHS, and in the last biennium 18 collected the reimbursement funds associated with these agreements. The amount reimbursed varied greatly from \$1,340 in Curry County to \$614,800 in Multnomah County each biennium. Twenty-one DA Offices accepted the supplemental grant funding via an intergovernmental agreement (IGA) with DHS last biennium. The amount granted varied from \$4,399 in Grant County to \$455,752 in Multnomah. Multnomah currently receives \$2.6 million dollars for the TPR IGA.

DOJ has a formal attorney-client relationship with DHS (as with every state agency). DOJ therefore, consults with DHS as necessary on all cases and represents the agency in the courtroom in various motion hearings, contested review hearings, contested permanency hearings, guardianship and TPR trials in all counties (except TPR trials in Multnomah). In addition, DOJ represents the agency in shelter hearings in four counties, jurisdictional trials in three counties, and the majority of all review and permanency hearings in nine counties. DOJ handles jurisdictional trials statewide when the DA identifies a conflict or elects not to appear on the petition. DOJ provides legal “file reviews” on every case where a child has been in foster care for five months and again after the child has been in care for 11 months. DOJ also

represents the agency on all auxiliary issues related to dependency cases (including *inter alia*, foster care certification, licensing, Interstate Compact on the Placement of Children, and paternity), assists with legislation, administrative rules, and the interpretation and implementation of statutes, rules, policies, and procedures statewide. Finally, DOJ represents DHS on all related legal administrative actions (including certification of foster homes administrative hearings, adoption assistance administrative hearings, and Child and Adolescent Needs and Strengths (CANS) cases) and consults with attorneys in other divisions of DOJ that represent DHS in matters related to or stemming from the dependency case (Trial Division, General Counsel and Appellate) to ensure statewide consistency. DOJ average caseloads depend on the level of representation provided in a county, but attorneys are typically managing above the ABA Center recommended 60-80 cases.

For all of these services, DOJ bills by the hour at the following rates for the 15/17 biennium: Assistant AG- \$175/hr; Investigator- \$96/hr; Paralegal- \$116/hr; and Law Clerk- \$55/hr.

DHS has 24 paralegals working in all but one of DHS's 16 district offices. Seven of these are job share positions, making the actual total 19 full-time equivalent (FTE) paralegals. The current role of these paralegals varies from assisting with petitions, fulfilling public record requests, and/or coordinating staffings with DOJ attorneys. These paralegal positions are not supervised by attorneys and are limited in what they can do. Paralegals, like DHS caseworkers, cannot engage in the practice of law.

The total state budget for government representation in the 2015-2017 biennium was \$38.4M, consisting of DHS general funds and federal dollars leveraged to fund the DAs, the DOJ, and DHS paralegals. This total does not include individual county contributions for the work of DAs.

C. Attributes of a System of Quality Government Representation

The Task Force reviewed models of representation used across the country, surveyed the academic literature, and investigated the recommendations of national standard-setting agencies to identify nine attributes of quality systems of government representation. Four of these attributes are deemed critical to the improvement of Oregon's dependency representation model for the government. These four attributes, described below, guided the decision-making process that led to the recommendation presented below.

Priority attributes:
Availability- Attorneys have sufficient time and ability to meet the needs of DHS and the court. When attorneys are readily available, it is easier for case managers to seek input from legal counsel, make collective decisions, and schedule court hearings in a timely manner. Attorney availability guides lawful practice in and outside court. This promotes better DHS decision making, more efficient case resolution, and decreased DHS liability risk.
Consistency- Families across the state of Oregon receive consistent standards-based, competent legal representation. Quality assurance and accountability are present.
Cost-Effective/Cost-Efficient- Cost-effective services ensure that funds are spent to support necessary value-added services that protect the agency and promote lawful practice. Cost-efficient services ensure that legal services are provided in a manner that takes advantage of available economies of scale, process efficiencies, and technological advances, in addition to decreasing unnecessary transaction costs. These attributes collectively ensure that quality legal services are provided without excessive cost.
Outcome-Oriented- The model has been shown to play a role in the larger child welfare system that improves outcomes for children and families. Stakeholders in the dependency court system must not only do their utmost to fulfill their distinctive roles but must work collectively (where legally possible and feasible) toward the common goal of improved outcomes for Oregon children and families.

Remaining attributes important to high quality representation:

Comprehensiveness- Resolution of dependency cases often requires the management of numerous corresponding legal issues (e.g., SSI, ICPC, paternity, etc.). These services are necessary to ensure the best possible outcomes are reached in a timely manner.

Continuity – One attorney (or legal entity) handles a case from petition to permanency. This promotes efficient and careful practice, best supports caseworkers, and is a national best practice.

Local Community Connection- Attorneys are located in the community, know local practitioners, and have strong working relationships with the local court, DHS caseworkers, and service providers. This enables attorneys to understand community values and engage in effective local practice.

Manageable Caseloads- Attorneys are not overburdened and have the time and resources to adequately prepare for court and provide strong advocacy in and out-of-court. This promotes better legal work and timely resolution of dependency cases.

Objectivity- Attorneys have the ability to provide objective legal advice and counsel to client agency. This promotes lawful practice while allowing caseworkers to focus on best social work practice and improved outcomes.

2. Recommendation

Recommendation: DHS should enter into a block grant or flat fee agreement with DOJ for full agency representation from petition to permanency. The Oregon State Legislature should allocate funding to DHS so that it can leverage federal grant and reimbursement programs and enter into a flat fee or block grant agreement with the DOJ for comprehensive agency representation from petition to permanency 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.

Historically, DOJ’s billable hour model has been considered cost-prohibitive in juvenile dependency cases and has been a deterrent to DHS accessing and utilizing DOJ for full representation—including attendance at all hearings, regular case consultation, impromptu legal advice, and regular participation in case worker training, meetings, and staffings. A block grant model will allow DOJ to manage cases according to a workload method of case assignment with each DOJ attorney carrying a consistent number of weighted cases. In this model, each dependency case is assigned to an attorney who handles it from petition to permanency. This case assignment method will provide DHS caseworkers with continuous representation which, in turn, will promote attorney-caseworker collaboration, improve caseworker job satisfaction and retention, avoid the risk for unlawful practice of law by case workers, and improve the overall efficiency and cost-effectiveness of the system.

Where DHS has had a unique historic intergovernmental agreement with a DA’s office to litigate TPR trials, such as Multnomah County, and where that DA is willing to provide full representation of the Agency from petition to permanency, DHS under this model should be allowed the option, should the DAs office be interested, to contract with that office for services in lieu of DOJ, provided that certain conditions are met. **In addition, nothing in this recommendation should be construed to eliminate “the state” as a party in dependency cases. DAs interested in continuing their unique role representing the state (“the people” as opposed to the agency) at the jurisdictional phase of dependency cases are encouraged to do so. However, limited DHS funds should be allocated to provide full representation for the agency.**

Representation for Court Appointed Special Advocates (CASAs)

Separate from the work of the alternative models subcommittee, but related to models of representation in the Oregon dependency system, the Task Force considered the matter of legal representation for Court Appointed Special Advocates (CASAs):

1. Findings

Federal law requires that the best interests of every child in dependency proceedings be represented through a guardian *ad litem*.⁷⁴ A volunteer Court Appointed Special Advocate (CASA) may serve that role and Oregon relies on CASAs to fulfill this federal requirement.⁷⁵ Oregon law designates each CASA volunteer as a legal party to the dependency case, with full rights to participation in juvenile court proceedings, and liberal access to information relating to the child.⁷⁶

CASAs are volunteers who receive 35 hours of pre-service training in the child welfare and juvenile court systems. The training focuses on their role in helping children achieve safe, sustainable permanency; preferably with their own parents when possible. CASAs are supported by supervisors who, in most instances, have personal experience in child welfare, juvenile court, or other child-serving professions.

CASAs commit to at least two years of service involving five – 20 hours each month. CASAs most frequently remain as advocates until case closure or when permanency is achieved. In 70% of cases, children have one advocate for the duration of their case. CASAs meet with their assigned children at least monthly and investigate the child's circumstances by interviewing parents, other family members, school personnel, and other community partners providing services to the family. CASAs report to the court through written reports and oral testimony at all dispositional, review, and permanency hearings. CASAs use information gathered during investigation and ongoing contact to facilitate positive outcomes for children outside of court through direct advocacy with DHS, schools, and other community providers. Well trained and supervised CASAs provide important high quality advocacy for children, and can be as effective as attorneys or law students with similar levels of training and supervision.⁷⁷

Twenty-three county-based non-profit organizations recruit, train, and support Oregon CASAs. All programs must be in substantial compliance with the *National CASA for Children Program Standards*. These standards include the requirement that CASA programs provide access to legal counsel "as needed to assist in performing the duties assigned to the volunteers by the courts."⁷⁸

A. Current Model of Representation

Currently, CASA for Children (serving Columbia, Multnomah, and Washington counties) is the only Oregon CASA program meeting this standard. Because volunteers are directly supervised by staff with expertise in juvenile court or child welfare systems, CASA for Children uses a Program Attorney model. In this model, the attorney provides legal consultation and training, along with occasional in court representation. Most legal needs are met without formal appearances by the attorney. The Program Attorney (1) is on-call to the program, allowing for rapid access to legal services; (2) participates in pre-service and on-going training for staff and CASAs; and (3) assists with systemic program issues. Providing adequate legal consultation increases the effectiveness of CASA advocacy.

CASA programs without legal counsel report difficulty performing relatively simple legal tasks: initiating requests for court review, responding to subpoenas for CASA testimony, and preserving CASA recommendations and findings in court records. Programs also report challenges with other advocacy needs that generally are accomplished with legal consultation: interpreting new case law or statutory changes, developing strategies for advocacy outside of juvenile court proceedings that require

understanding of administrative law, and continuing to provide meaningful advocacy in complex juvenile court proceedings.

2. Recommendations

Recommendation: Provide funds sufficient to support four statewide CASA Program Attorneys so that CASAs in Oregon have timely access to legal consultation and representation. Oregon’s state administrator for general fund CASA appropriations should create standards and contracting procedures to manage legal services contracts for CASA programs through the Oregon CASA Network. To improve advocacy and bring programs into compliance with national standards, CASA programs should have access to legal counsel experienced in child welfare and juvenile court advocacy to provide consultation, limited direct representation, training, and consultation on systemic processes and reforms. Services should be available regionally, and be housed in local CASA programs selected for their capacity to support new personnel and regional accessibility.

Findings & Recommendations: System Improvement

In order to support the model recommendations described above, the Task Force, through its subcommittees and at the direction of the Legislature, also assessed discrete system areas that affect the overall practice of dependency representation, including: issues with regard to the unlawful practice of law, performance standards, quality assurance and continuous quality improvement measures, and improved crossover case practice. Findings and recommendations with respect to those matters are provided below.

Preventing the Unlawful Practice of Law

1. Findings

A. Regulation of the Practice of Law

The discussion about unlawful practice of law (UPL) and representation in childhood dependency proceedings necessarily begins with clarity about which branch of government has the power to regulate who represents parties.

Article III, Section 1 of the Oregon Constitution provides:

“The powers of the Government shall be divided into three separate [sic] departments, the Legislative, the Executive, including the administrative, and the Judicial; and no person charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.”

As a separate branch of government, the judicial branch possesses certain inherent powers necessary to ensure the courts’ functioning. In Oregon, “[n]o area of judicial power is more clearly marked off and identified than the courts’ power to regulate the conduct of the attorneys who serve under it.”⁷⁹ Although the Oregon Supreme Court has acknowledged its inherent power to regulate the practice of law, it has also recognized that the legislature has the power to regulate “some matters which affect the judicial process.”⁸⁰ The Court has held that, “[t]he limits of legislative authority are reached, however, when legislative action unduly burdens or unduly interferes with the judicial department in the exercise of its judicial functions.”⁸¹

At the heart of the judicial process is the ability to control judicial proceedings and the parties that appear in front of the court. After all, the court’s power to control who appears before it is “an essential part of the judicial machinery with which it is entrusted by the constitution[.]”⁸²

Except in limited circumstances, a person who wants to represent others before a court must be an active member of the OSB.⁸³ Others may not do so without court permission; for instance, out-of-state attorneys who seek to appear before a court must apply to appear *pro hac vice*.⁸⁴

Although individual parties may appear *pro se* to represent themselves, the state must generally appear through an attorney. Oregon statutes require that “[a]ny action, suit, or proceeding may be prosecuted or defended by a party in person, or by attorney, *except that the state or a party that is not a natural person appears by attorney in all cases, unless otherwise specifically provided by law.*”⁸⁵ Under most circumstances, the Attorney General is the legislatively mandated attorney for the state.⁸⁶ An exception to this legislative requirement is in place for DHS in dependency proceedings. Temporary legislation passed in 2014 and extended by Senate Bill 222 in 2015 currently provides that DHS “may appear without the Attorney General at: (1) Any hearing held after the hearing required under ORS 419B.305 has been held; and (2) Any proceeding where the district attorney represents the state, provided the positions of the department and the state are not in conflict with respect to issues raised for consideration or determination in the proceeding.”⁸⁷ This legislation sunsets in 2017.

Determinations about who should represent the state (e.g. the Attorney General or a District Attorney) are within the purview of the Legislature.⁸⁸ Decisions about who *is qualified to appear and represent others before a court* are within the purview of the Judiciary. Attempts to legislate who is qualified to appear and represent others before a court may lead to determinations that “unduly interfere with the judicial department in the exercise of its judicial functions.”⁸⁹

There are significant benefits to having the judiciary determining which individuals are qualified to represent others in court. In particular, the court is able to impose standards on parties who appear before it and does so in order to regulate the practice of law and protect the public.⁹⁰ For example, to be admitted to the OSB and have the right to appear and represent others in Oregon courts, a person must pass a bar examination administered by the Board of Bar Examiners to demonstrate basic competence,⁹¹ as well as a character and fitness evaluation.⁹² Once admitted, all attorneys must comply with the Oregon Rules of Professional Conduct, which are promulgated by the Supreme Court. The OSB, as an instrument of the judicial department, administers an attorney disciplinary system to enforce compliance with the rules.⁹³ The Bar also administers a mandatory continuing legal education program for Oregon attorneys so that they maintain basic competence.⁹⁴ For these reasons, decisions regarding the lawful or unlawful practice of law or a determination that representation in court by a non-attorney is appropriate fall within the purview of the Oregon Supreme Court, through its rules.

B. Defining the Practice of Law

Currently in many Oregon counties, DHS employees draft and file dependency petitions and some write orders and judgments. Additionally, pursuant to the statutes described above, caseworkers across the state frequently appear in court without counsel. This subcommittee has been tasked with assessing which of these actions, if any, when taken by Oregon DHS employees, who are not represented or supervised by counsel, constitute unlawful practice of law.

Case law extensively addresses what constitutes the practice of law. The Oregon Supreme Court has not provided a comprehensive definition of the practice of law but has used the following general definition: “any exercise of an intelligent choice, or an informed discretion in advising another of his legal rights and duties[.]”⁹⁵ The Court of Appeals has stated that the practice of law is the “exercise of professional judgment in applying legal principles to address another person’s individualized needs through analysis, advice, or other assistance.”⁹⁶ A number of specific acts have been determined to fall within the practice of law.⁹⁷ Further, and of particular relevance, in a footnote in *State ex rel. Or. State Bar v. Lenske*,⁹⁸ the Supreme Court stated that a lawyer may employ non-lawyers to perform any task except counsel clients about law matters, engage directly in the practice of law, appear in court or appear in formal proceedings

as a part of the judicial process, so long as the lawyer takes the non-lawyer's work, vouches for it, and becomes responsible for it.

Based on existing case law, the Board of Governors of the OSB has defined the unlawful practice of law to include:

"the practice of law, as defined by the Oregon Supreme Court, in Oregon, by a person who is not an active member of the Oregon State Bar and is not otherwise authorized by law to practice law in Oregon; or (2) holding oneself out, in any manner, as authorized to practice law in Oregon when not authorized to practice law in Oregon."⁹⁹

C. Conclusion

A model of government representation that provides full representation (where, attorneys continuously represent, advise and appear in court with DHS at every court hearing), for the agency will ultimately prevent unlawful practice of law by DHS employees in the courtroom. The Task Force has recommended a model that provides for full representation for DHS. However, if DHS should have less than full representation, the Task Force then provides the recommendations as presented below to mitigate concerns about the unlawful practice of law.

2. Recommendations

Recommendation: Should DHS have something less than full representation (where for example, DHS continues to appear without legal counsel at court hearings or where the appearance is limited to certain types of court hearings) the following bundle of recommendations should be implemented to prevent the unlawful practice of law by DHS employees:

- a) **In order to prevent 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, the attorney must review, and adopt the non-attorney's work by signing the document to be filed with the court.** Preparing legal documents and presenting them to the court are actions that have been determined to be the practice of law. The court has, however, found that non-lawyers may engage in these practices, as long as the lawyer takes the non-lawyer's work, vouches for it, and becomes responsible for it to the client. Thus, requiring attorneys to prepare or review and certify petitions, orders, and judgments should prevent the unlawful practice of law.
- b) **In order to prevent unlawful practice of law by DHS employees, employees who appear in court without an attorney should be sworn in either as a fact witness or, where proper foundation has been established,^l an expert witness, and present testimony in this role pursuant to the rules of evidence.^m** Non-attorneys cannot appear in court to advocate on behalf of a client entity without engaging in the unlawful practice of law. Swearing in DHS employees as witnesses clarifies their role in the courtroom, allows for relevant information to be reported to the court, and provides parameters for the information DHS employees present to the court that should prevent the inadvertent unlawful practice of law.
- c) **In order to prevent unlawful practice of law by DHS employees, employees who appear in court without an attorney should not make legal arguments, cite to legal authority, or**

^l While this may address the UPL issues, this would not address the DHS employee's ability to be able to respond to cross-examination by other parties' attorneys or understand the implications of their sworn testimony. This also creates inconsistencies statewide as courts do not always follow the same model of questioning the agency or take on the role or assume that responsibility.

^m While this may address the UPL issues, this would require that DHS employees rely on other parties to lay the foundation for the DHS employee to testify as an experts.

advocate for a legal position.ⁿ It is paramount that DHS employees understand that it is their role to provide evidence grounded in facts and expert social work opinions based on facts, and not directly apply the facts to the law or provide legal arguments. Caseworkers should be counseled about these restrictions and judges should, as necessary, make in-the-moment decisions that guide DHS employees' practice, and to the extent possible prevent the inadvertent unlawful practice of law.

Implementing Improved Performance Standards for Dependency Practitioners

1. Findings

Lawyers in dependency cases "can greatly influence a case, for good or ill, depending on their level of involvement, their training and experience, and the legal standards governing their conduct."¹⁰⁰

Representing a party in a dependency proceeding is a difficult and emotional job. It is also a job filled with legal complexities, unique ethical considerations, and many responsibilities. Standards can serve an important role in dependency practice: helping an attorney prioritize duties and manage the practice to benefit each client in the attorney's caseload.¹⁰¹ "[P]erformance standards should serve as a valuable tool both to the new lawyer...and to the experienced lawyer who may look to them in each new case as a reminder of the components of competent, diligent, high quality legal representation."¹⁰²

Systemically, practice standards can "promote quality of representation and uniformity of practice"¹⁰³ as well as "improv[e] professional practices and assur[e] timely decisions on permanent placement of children."¹⁰⁴ The ABA Center and USDHHS both recommend that States require a set of performance standards for attorneys in child welfare practice. Both entities also provide model performance standards to aid states in this work.¹⁰⁵ Some states have established formal performance standards that govern the practice of lawyers representing children, parents, and/or the government in child welfare (dependency) proceedings.¹⁰⁶ Oregon is one of these states. Oregon has implemented performance standards for attorneys for children and parents in dependency and TPR cases, as well as for youth in delinquency cases.

In September 1996, Principles and Standards for Defense Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases were approved by the OSB Board of Governors.¹⁰⁷ As the entity that regulates the practice of law in Oregon, OSB was determined to be the most appropriate entity to promulgate and monitor these standards.¹⁰⁸ In 2006, significant changes were adopted to the dependency and TPR standards and, in 2009, an additional set of standards was adopted pertaining to representation in post-conviction cases.¹⁰⁹ In 2012, at the direction of the OSB, two separate workgroups began to meet to work on significant revisions to 1) juvenile dependency and TPR standards for parents and children's attorneys; and 2) adult criminal and juvenile delinquency standards.¹¹⁰ The work of the Task Force on Standards of Representation in Juvenile Dependency Cases concluded in 2014 with the submission of a report to the OSB Board of Governors that focused specifically on dependency practice and bifurcated the standards for parent representation and child representation into two distinct sets of standards.¹¹¹ These standards were loosely modeled on the ABA model standards of practice for attorneys representing children and parents (respectively). These standards represent an important step forward; however, in the time since their issuance practitioners have noted some clerical errors and problematic inconsistencies. Further, local and national expert-practitioners have identified an area of practice (including pre-petition representation and representation of crossover youth) where additional standards may be helpful.¹¹²

ⁿ While this may address the UPL issues, this does not, however, alleviate the concern that the DHS employee may not understand the implications of what to report or how the evidence they are providing may be questioned by the other parties' attorneys, either at the hearing or on appeal.

Although performance standards for government attorneys (both those attorneys who represent “the state” or “the people” and those attorneys who represent “the agency” or DHS) have been discussed and informally considered, Oregon does not have any such formalized standards in place.

2. Recommendations

Recommendation #1: Oregon should have relevant performance standards for juvenile dependency attorneys who represent parents, children, and the government.^o These standards should be realistically attainable by practitioners but also be designed to promote best practice. As the entity that regulates the practice of law in Oregon, OSB in coordination with the relevant attorney organizations (e.g., DOJ, OPDS, DAs, and Members of the Oregon Criminal Defense Lawyers Association (OCDLA) juvenile law committee), should generate and revise performance standards. The standards ultimately should be adopted by the OSB Board of Governors. Input from the DHS and representatives from counsel for the other parties should be included in the development or amendment of each of set of standards.

The performance standards generated for government attorneys should, like the standards for parent and child attorneys, use the ABA Center on Children and the Law standards, in this instance [Standards of Practice for Lawyers Representing Child Welfare Agencies](#), as a starting point, and should follow a similar or complementary structure to the performance standards for parent and child attorneys.^p

The performance standards for parent and child attorneys should be revised to clarify the attorneys and proceedings to which they apply, to appropriately ensure consistency across all sets of juvenile dependency performance standards, to conform to OPDS internal policies, to address clerical errors, and to consider including standards for pre-petition practice and crossover case practice.

Recommendation #2: Oregon practitioners should be trained in the performance standards relevant to their practice and cross-trained in the performance standards relevant to the practice of the other attorneys in the system. It is important that performance standards be used as a reference guide or practice manual for juvenile dependency attorneys. Regular trainings for new attorneys and refresher courses for experienced attorneys will promote a deep understanding and use of the performance standards.

Recommendation #3: Oregon judges should be trained in the performance standards for all juvenile dependency attorneys (parent, child, and government practitioners). Judges are in a unique position to observe the performance of attorneys. Training on the performance standards will give judges the knowledge necessary to promote and support good practice in their courtrooms.

^o It should be noted that in spite of this recommendation, ODAA does not agree to performance standards for DAs. ODAA agrees that quality representation is necessary for all parties in a dependency cases, however, because the model recommended by the Task Force provides no funding for DAs who wish to continue their role representing “the state” (as opposed to DHS) in dependency proceedings. The ODAA would agree to performance expectations and outcomes within the four corners of a grant, but not performance standards accepted and administered by the OSB Board of Governors.

^p It should also, like the Standards of Representation in Dependency Cases for Parent and Child attorneys, include the following language in the forward:

“These guidelines, as such, are not rules or requirements of practice and are not intended, nor should they be used, to establish a legal standard of care. Some of the guidelines incorporate existing standards, such as the Oregon Rules of Professional Conduct, however which are mandatory. Questions as to whether a particular decision or course of action meets a legal standard of care must be answered in light of all the circumstances presented.”

OR. STATE BAR, REPORT OF THE TASK FORCE ON STANDARDS OF REPRESENTATION IN JUVENILE DEPENDENCY CASES (June 2014), Forward, available at <http://www.osbar.org/docs/resources/juveniletaskforce/JTFR3.pdf>.

Recommendation #4: Non-lawyers who regularly participate in the juvenile dependency system, such as CRB members, CASA, and DHS workers, should receive training on the performance standards. It is important for individuals in the dependency system to know the standards and expectations for the attorneys who represent the government, parents, and children in these cases.

Recommendation #5: Performance standards for all juvenile dependency attorneys (parent, child, and government practitioners) should, to the extent practicable, be incorporated into statewide quality assurance efforts. Quality assurance efforts should provide an opportunity to formally monitor practitioner proficiency with and fidelity to these standards. Those who draft the performance standards should work closely with the entities in the state dependency system who perform quality assurance work to incorporate these standards, to the extent practicable, into existing and future continuous quality improvement efforts.

Monitoring Practice and Advancing Outcomes through Continuous Quality Improvement

1. Findings

Without essential information, child abuse and neglect systems—and the dependency systems that support them—cannot determine what types of improvements are needed and whether efforts to improve practice are working.

“[E]veryone involved in the protection of children is committed to the goals of safety, permanency, and well-being for every child. However, commitment to these goals is not enough. As stakeholders in whom the public has placed its trust, we must commit to a continuous process of improving and strengthening our dependency system and cross-system supports. Performance measurement is only one step in that process, but it is a critical first step.”¹¹³

Performance measures, coupled with a quality assurance process, can help systems “establish baseline practices; diagnose what they need to improve; and use that information to make improvements, track their efforts, and identify, document, and replicate positive results.”¹¹⁴

Quality assurance measures or performance measures are those specific measureable indicators that “help courts[, representation systems,] and child welfare agencies establish a baseline from which to measure the success of their improvement efforts and to identify areas where improvements are still necessary.”¹¹⁵ Specifically, the ABA Center has found that performance measures can be used to measure the impact of “rule, policy or practice changes on...representation in a jurisdiction.”¹¹⁶ They are an integral part of a Continuous Quality Improvement (“CQI”) processes. This process is often described as “identifying, describing and analyzing strengths and problems and then testing, implementing, learning from and revising solutions. Simplified, the model identifies the cyclical steps in a process of systems change—the plan, do, study, act model.”¹¹⁷ These efforts can improve dependency systems and associated representation models, which, in turn, improve outcomes for children and families in the process.

For these reasons, performance measurement, and other quality assurance efforts, have been used by child welfare agencies for years to establish and gather regular and reliable sources of information that evaluate system performance, aid in decision-making, and report success and challenges to external stakeholders.¹¹⁸ In 2008, the United States Department of Justice, with partners the National Center for State Courts, the National Council for Juvenile and Family Court Judges, and the ABA Center on Children and the Law, found that “[l]ike child welfare agencies, juvenile and family courts must focus not only on the timeliness of case processing and decisionmaking [sic], but also on the quality of the process and the outcomes resulting from the court’s efforts.”¹¹⁹ In response, these organizations collectively released a

guide to Court Performance Measures in Child Abuse and Neglect Cases urging courts across the county to engage in quality assurance efforts.¹²⁰ Adding to the quality assurance movement, in 2012, Court Improvement Program directors from Region VI of the Children’s Bureau discussed the importance of improving representation for parents. That meeting led to the creation, piloting, and eventual publication, in 2014, of Indicators of Success for Parent Representation authored by the ABA Center on Children and the Law.¹²¹ These tools have supported the gathering and reporting of quality assurance measures and continuous quality improvement processes in states and jurisdictions across the country to monitor various aspects of the child welfare system including, in some states, systems of representation.¹²²

In Oregon, the Juvenile Court Improvement Program (JCIP) began collecting and reporting timeliness data and system-wide performance measures in 1999. Each quarter, JCIP provides quarterly reports on these measures to all court administrators, presiding judges, juvenile court judges, and court staff. These reports are a periodic reminder to aid local stakeholders in their efforts to improve dependency court practice.¹²³ Because the problems of children and families involved in the juvenile dependency system cannot be solved by the judicial branch alone, in 2005 JCIP launched the JCIP Model Court Program to foster multidisciplinary, collaborative improvement efforts in our local communities. JCIP provides training on performance measures, facilitated self-assessments, and provided local JCIP model court teams with technical assistance and support to implement continuous quality improvement processes at the circuit court level. In 2014, the OPDS launched a pilot program “The Parent and Child Representation Project” which has created significant system improvements with regard to how children and parents are represented in three counties in Oregon. To track the effect of these systemic changes, OPDS has selected a set of performance measures that it is tracking and has engaged in a continuous quality improvement process.¹²⁴ To date, there are no quality assurance efforts that specifically target the district attorney or DOJ systems of representation in Oregon.

The courts, DHS, service providers, and attorneys who represent the government, children, and parents are all involved in dependency cases. Each entity has a different responsibility and plays a different role in the child welfare system.¹²⁵ Although each entity is limited in its ability to individually “cause” any given outcome, and the level of influence each entity has on outcomes varies, each has some level of influence and the ability to affect outcomes in these cases.¹²⁶ Additionally, the public holds all these entities collectively accountable for the outcomes achieved for children who have been abused or neglected.¹²⁷ To date, little has been done in Oregon to examine the impact that attorneys for the government, children, and parents have on any given outcome; however, the PCRCP is beginning to examine the link between parents’ and children’s attorney performance and case outcomes. Moreover, little data is available in Oregon on basic outputs (measurable realities) of attorneys (parent, child, and government) in the dependency representation system. Consistent and reliable performance data is needed to ensure that Oregon’s dependency representation system not only provides efficient and effective legal services to all parties, but also contributes to improving outcomes for and fulfilling the state’s responsibility to Oregon children and families.

2. Recommendations

Recommendation #1: The following Quality Assurance Outcome Measures should be collected and reported to assess the effect of the current model of representation and the effect of any changes to the model suggested by this Task Force and implemented by the legislature and the administration. Although there are additional outcome measures that may be relevant to the representation model or dependency representation system (see appendix A), these priority measures are recommended for collection and use as part of the Continuous Quality Improvement Process (see Recommendation #3) because of their overall importance, ability to provide information about known current systemic issues, and their potential correlation to representation (noting that representation is just one aspect of the dependency system that affects these outcomes). In addition, these measures have been recommended for collection in dependency representation and court systems by national organizations and states that have implemented quality assurance measures for representation systems.

Performance Measure	Indicator	National documents that recommend this performance measure	Is this collected/ reported?
Outcome Measures			
Successful Permanency	Total percentage of children reaching permanency*	ABA Indicators of Success for Parent Attorneys ("Indicators of Success") ¹²⁸ ; Toolkit for Court Performance Measures in Child Abuse & Neglect Cases ("Toolkit Measures") ¹²⁹	Currently Collected and Reported by DHS
	Reunification <ul style="list-style-type: none"> • Median Months to Reunification (FO.02.1) • Percent of cases where permanency found through reunification 	Indicators of Success; Toolkit Measures	Currently Collected and Reported by DHS
	Adoption <ul style="list-style-type: none"> • Median Months to Adoption (FO.02.2) • Percent of cases where permanency found through adoption 	Indicators of Success; Toolkit Measures	Currently Collected and Reported by DHS
	Guardianship <ul style="list-style-type: none"> • Median Months to Guardianship • Percent of cases where permanency found through guardianship 	Indicators of Success; Toolkit Measures	Currently Collected by DHS
Parent and Child Contact	Visitation Between Parents & Children <ul style="list-style-type: none"> • Type • Location • Supervision 	Louisiana Child Attorney Quality Assurance Indicators ("LA Indicators") ¹³⁰	Currently Collected by DHS
Timeliness of Hearings	Continuances and set overs <ul style="list-style-type: none"> • Number • Person requesting • Reason 	National Center for State Courts CourTools (with regard to hearings/trials) ¹³¹	Not currently collected

Performance Measure	Indicator	National documents that recommend this performance measure	Is this collected/ reported?
<p>*Although the total percentage of children achieving permanency may increase, it is important to note that permanency outcomes may not necessarily all improve together. Getting more children reunified and into guardianships, for example, might lead to a reduction in the percentage of children who are adopted, nonetheless, this scenario would still be an improvement in overall permanency outcomes.</p>			

Recommendation #2: The following Quality Assurance Output Measures should be collected and reported to assess the current model of representation and the effect of any changes to the model suggested by this Task Force and implemented by the legislature and the administration.

Although there are additional output measures that may be relevant to the representation model or dependency representation system (see appendix A), these priority measures are recommended for collection and use as part of the Continuous Quality Improvement Process (see Recommendation #3) because of their overall importance, ability to provide information about known current systemic issues, and their potential correlation to representation (noting that representation is just one aspect of the dependency system that affects these outputs). In addition, these systemic measures have been recommended for collection in dependency representation and court systems by national organizations and states that have implemented quality assurance measures for representation systems.

Performance Measure	Indicator	National documents that recommend this performance measure	Is this collected/ reported?
Output Measures			
Workload	Attorney caseload, separated by case type including, for example dependency, delinquency, child support, criminal, and other. Other commitments by attorneys (e.g., supervising, magistrate commitments) may be recorded as a percentage of FTE.	Indicators of Success	Generally not currently collected.*
	The percentage of cases where one lawyer handles the case from petition to permanency. <ul style="list-style-type: none"> Number of times a different lawyer "covers" the case for a hearing 	Toolkit Measures	Generally not collected.
Continuity	The percent of juveniles with both dependency and delinquency cases who are represented by the same attorney for all cases.	Toolkit Measures	Generally not currently collected.
	Parent/Child Attorney Participation in Out-of-Court Meetings: <ul style="list-style-type: none"> Type of meetings Time spent in meetings 	Indicators of Success; LA Indicators	Generally not currently collected.*
Out of Court Work	Attorney Client Contact: <ul style="list-style-type: none"> Frequency Nature of Contact (via phone, in person, 	Indicators of Success; LA Indicators	Generally not currently collected.*

Performance Measure	Indicator	National documents that recommend this performance measure	Is this collected/ reported?
	immediately before court proceeding?)		
Court Room Practice	Government Attorney Present at Court	Toolkit Measures	Not currently collected.
Client Satisfaction	Client (parent, child, caseworker, DHS mgmt.) satisfaction	Indicators of Success; National Center for State Courts CourTools ¹³² ; LA Indicators	Generally not currently collected.*

* Currently collected and monitored in OPDS PCRCP counties (Linn, Yamhill and Columbia).

Recommendation #3: A standing workgroup coordinated by the Judicial Department that includes representatives from DHS child welfare, DOJ, OPDS, and ODAA should be formed to meet quarterly and implement the collection and reporting of the recommended quality assurance measures and engage in a basic continuous quality improvement process.

Understanding that Oregon has not systematically collected quality assurance outcome and output measures directly related to the dependency representation system, a workgroup should be formed to implement Recommendations #1 and #2. As Oregon undertakes this work for the first time, the workgroup should focus on creating a strong foundation and simple, straightforward means to collect and report these measures and provide recommendations for systemic improvement. The work of this group will ultimately provide the state, stakeholders, and representation entities with the information necessary for continuous conversations about and improvements to the dependency representation system.

The Judicial Department is best suited to provide ongoing leadership and coordination of this work; the longstanding work of the JCIP to develop and implement performance measures and assist local courts with continuous quality improvement activities helps improve outcomes at the local level through local multidisciplinary model court teams.

Recommendation #4: Resources should be provided to the Judicial Department to coordinate and support these continuous quality improvement efforts described in Recommendation #3. Resources should also be provided to each entity supervising or coordinating the attorneys who practice in the dependency representation system (DOJ, OPDS, and ODAA) to support workgroup participation and the collection and reporting of quality assurance measures.

Juvenile and family law cases take up a significant share of the workload of many of Oregon’s courts and profoundly impact the lives of thousands of children and parents each year. Despite the importance of these cases to both courts and families, and despite Oregon’s being one of the first state court systems in the country to adopt and report statewide performance measures, OJD has, since 2009, has only been able to provide very limited performance metrics, via detailed reports on juvenile dependency court practice statewide. The present lack of capacity to track caseloads and processing times for all court cases has left circuit courts unable to adequately monitor improvements in case processing, evaluate new programs or staffing patterns, or identify weaknesses in performance compared to other Oregon courts. Lack of data analysis and research capability also prevents the Office of the State Court Administrator, Chief Justice, trial courts, internal and external stakeholders, and the Legislature from making data-informed decisions on potential system, resource, and statutory changes concerning Oregon’s children and families. The limited dependency court performance measure work that OJD has accomplished in

recent years has been funded through a federal Court Improvement Program grant. The OJD currently does not have the resources to lead and coordinate this multi-agency data collection, reporting, and continuous quality improvement process. A one FTE analyst would be needed to support this work at OJD as OJD would need dedicated staff to provide:

- ongoing leadership and coordination of the work group.
- data reporting, statistical analysis, and performance measure support for the new data measures that would be required of OJD (such as continuances and set-overs, attorney presence at hearings).
- expert advice and guidance (to DOJ, DAs, and OPDS) on sound data mining and reporting techniques and methodologies for collecting the workload and out of court measures.
- coordination of periodic client satisfaction surveys.
- coordination of annual reports to the legislature on performance measures and continuous quality improvement activities.

The entities that supervise and coordinate the attorneys who practice in the dependency system have limited experience in and capacity for quality assurance and continuous quality improvement processes. Building data collection tools, providing training and support to more than 350 attorneys handling more than 47000 hearings in 2014, creating and managing reports, and analyzing data, are tasks which would require additional resources within the Office of Public Defense Services. Support for .2 FTE analyst position at OPDS will be needed to support this work. DOJ, as the agency's attorney, would require additional resources to collect and analyze the quality improvement measures described above and adequately provide statistics and actively participate in any statewide work group. Support for .2 FTE Research Analyst 1 (Step 2) position at DOJ will be needed. Providing a limited amount of resources to support this work will ensure that these processes can be created and implemented in a meaningful way.

Advancing Strong Crossover Case Coordination

1. Findings

National practitioner-experts have identified three categories of youth that have some involvement in both the delinquency and dependency system:

- **Crossover Youth:** Youth who experience maltreatment and engage in delinquency and who may or may not be known to the child welfare and/or juvenile justice systems
- **Dually-Involved Youth:** Crossover youth who have some level of concurrent involvement (diversionary, formal, or a combination of both) with both the child welfare and juvenile justice systems
- **Dually-Adjudicated Youth:** Dually-involved youth who are formally involved (sustained dependency court allegation) and are adjudicated by the delinquency court¹³³

Research has established that youth who have been abused or neglected are more likely to engage in delinquent behavior and become involved in the juvenile justice system.¹³⁴ In spite of this fact,

“youth known to both the child welfare and juvenile justice systems...tend to go undetected, following a stealth-like pathway between these two systems. As a group of children and youth suffering from the effects of childhood trauma, they are often underserved as they move from one system to another, experiencing the consequences of too little cross-systems coordination in developing case plans that will best serve them.”¹³⁵

These same youth face more dire outcomes than youth involved in the child welfare system alone.¹³⁶ Of specific relevance, youth who experience both systems have higher rates of recidivism and adult arrest.¹³⁷ For these reasons, research has emphasized the necessity of multi-system collaboration to

comprehensively address the risks and needs of youth involved in both the juvenile justice (delinquency) and child welfare (dependency) systems.¹³⁸

Research has also found that, “[a]fter a youth’s court disposition, a range of important legal issues persist related to conditions of their confinement, probation compliance, parole review, early release, appeals, access to education, and access to housing, among others.”¹³⁹ These issues are only further complicated by dual system involvement.

Because jurisdictions often find it difficult to identify youth with dual system involvement, regardless of their pathway or entry into these systems, and because information is rarely shared across systems,¹⁴⁰ national work has been done by the Georgetown Center for Juvenile Justice Reform and John F. Kennedy Children’s Action Corps to design, pilot, and document better integrated systems,¹⁴¹ practice models,¹⁴² and standard protocols¹⁴³ for youth with dual system involvement. Complementing this work, national organizations, including the Juvenile Indigent Defense Action Network, have recognized that that post-disposition representation in juvenile delinquency cases is a best practice and have piloted programs in states across the country with positive results.¹⁴⁴

A report commissioned by the Oregon Youth Development Council describes in detail the characteristics of Oregon youth who are dually involved. The study looked at youth from 1998-2010 and identified: “12,307 individual youth who had records in both [child welfare and juvenile justice] systems. This represents 11 percent of the youth with founded child welfare cases and 7.3 percent of the juvenile justice referrals. It would be a mistake however to use those percentages as estimates of the extent of the crossover issue, since it may take youth a period of several years to move between the two systems.”¹⁴⁵

Using different methodology, the same study found that from 2004-2009, 15.4 percent of juvenile justice referrals involved juveniles with previous child welfare contact and that, from 2006-2010, there was a steady decline in the percentage of children in the child welfare system with juvenile justice contact, trending toward three percent or less.¹⁴⁶

The report also found that half of the youth who are dually involved have some period of simultaneous or overlapping involvement in both systems.¹⁴⁷ In addition, about half of Oregon’s crossover youth first come into contact with the child welfare system, and half first come into contact with the juvenile justice system.¹⁴⁸ American Indian and Alaska Native youth, as well as African American/Black youth, are overrepresented in the crossover youth population at rates higher than their overrepresentation in either the child welfare or juvenile justice system alone.¹⁴⁹ Similarly, although young women are under-represented in the juvenile justice system (36%) they make up nearly half (46%) of Oregon’s crossover youth.¹⁵⁰

In order to better serve Oregon crossover youth, currently, Lane, Marion, Multnomah, and Washington Counties function under crossover case protocols that were crafted with technical assistance from the Georgetown Center for Juvenile Justice Reform. In addition to the formal protocols that are in place, many of these counties have also developed promising informal practices to coordinate cases that cross over between delinquency and dependency. In addition, Jackson and Douglas Counties are currently in the process of developing crossover case protocols with technical assistance from the same center. Funding and support for these efforts has come from the Youth Development Council in the Department of Education. Beyond this current cycle of counties, however, funding will no longer be available at the level necessary to access technical assistance directly from the Georgetown Center for Juvenile Justice Reform. In a recent survey by JCIP, Columbia, Wasco, Deschutes, Lincoln, and Clackamas counties indicated an interest in implementing a crossover case protocol. In addition, OPDS and OSB Performance Standards support and encourage post-disposition representation.¹⁵¹ Practice regarding appointment of post-disposition attorneys, however, varies across the state, and resources for this practice are uncertain.

The crossovers that occur between the delinquency and dependency system reflect one set of systemic interactions. There are also often cases where crossover issues between the dependency and criminal justice system and the dependency and the domestic relation system arise. Although less work has been done to study these cases at the national and local level, these crossovers can have significant impacts on outcomes for children and families in the dependency system.

2. Recommendations

Recommendation #1: Oregon practice should target crossover youth who have current and simultaneous involvement in both the child welfare and juvenile justice system in the following ways: 1) youth with an open case in the child welfare/dependency system who are subsequently referred to the juvenile justice/delinquency system, and 2) youth with an open case in the juvenile justice/delinquency system and are subsequently referred to and become involved in the child welfare/dependency system. The purpose of identifying crossover cases should, wherever possible, be to (1) prevent crossover from dependency into delinquency systems; (2) assure, that whenever possible, that the intervention is actually based on the youth's conditions and circumstances and the youth is placed in the least restrictive setting possible; and (3) when dual system involvement is necessary, ensure a coordinated streamlined response to the overlapping issues that bring the youth into multiple legal systems.

Recommendation #2: A basic statewide crossover case protocol should be established. This protocol should be based on the current protocol used in counties throughout Oregon and designed to promote consistent best practices with regard to information sharing, case management, and cross-systems decision-making in order to adequately protect and promote the legal interests of children across disparate court systems that may include dependency, delinquency, criminal justice, immigration, and domestic relations. The protocol should be considered the floor, not the ceiling, for crossover case practice in Oregon.

This protocol should be crafted by a team that includes all relevant stakeholder groups, including those who represent children, parents, and the government in dependency and delinquency proceedings. The team would include, but not be limited to, the ODAA, DOJ, OPDS, OCDLA, DHS, the Office of Youth Authority, the JCIP, Oregon Juvenile Department Directors Association, the Judiciary, the Department of Corrections, the Oregon Coalition of Children's Programs, the OSB, and parents and youth with experience in these systems.

Recommendation #3: JCIP should continue to partner with the Youth Development Council to help facilitate peer-to-peer technical assistance for counties that wish to develop more robust protocols than the basic statewide crossover case protocol. With four counties having current crossover case practices in place and two currently working toward this end, Oregon has established a cohort of local practitioner-experts. These experts, coupled with assistance from state level partners, offer a strong and low cost technical assistance team to counties hoping to expand on the basic statewide crossover case protocol through improved and enhanced local practice.

Recommendation #4: Performance standards for all delinquency, dependency, and criminal practitioners should be updated (or crafted) to reflect the unique nature of representation in crossover cases. The OSB Performance Standards for Representation in Criminal and Juvenile Delinquency and the OSB Performance Standards for Representation in Juvenile Dependency cases should include a requirement that all practitioners, regardless of their primary area of practice, have a basic understanding of the delinquency, dependency, and criminal justice systems, as well as child (including child brain) development; should necessitate a close collaboration between dependency and delinquency or criminal defense attorneys in crossover cases; and the Criminal and Juvenile Delinquency Standards should delineate the specific training needed by attorneys who represent juveniles charged with Measure 11 offenses. If or when corresponding standards are crafted for government counsel, they should include a requirement that all practitioners -- regardless of their primary area of practice -- have a

basic understanding of the delinquency, dependency, and criminal justice systems, as well as brain and child development, and should prescribe the specific training needed by attorneys who represent juveniles charged with Measure 11 offenses.

Recommendation #5: The Office of Public Defense Services should strive to ensure that, where practicable, a one lawyer one youth model is the general practice in crossover cases. Where one-lawyer-one-youth representation is not possible, OPDS should require that any attorneys representing the youth fulfill the OSB Performance Standards regarding representation of youth in crossover cases, and if the Standards are not updated pursuant to recommendation #4, that the two attorneys collaborate in their representation.

Recommendation #6: The Office of Public Defense Services, the courts, and other system stakeholders should identify ways to implement consistent post-disposition representation across the state, including for youth committed to the Oregon Youth Authority. Post-disposition is often a lengthy period of the delinquency court process that includes numerous complex legal issues that require counsel to guide youth toward better outcomes and away from further court involvement. Custodians and guardians of youth should ensure that youth are aware of their rights, post-disposition, including access to counsel and an opportunity for court review of placement.

Recommendation #7: Training on crossover cases as well as the basics of criminal, delinquency, and dependency practice should be made available in Continuing Legal Education (CLE) and training opportunities across these three practice groups. This would mean, for example, offering a CLE on the basics of dependency practice for criminal practitioners that specifically addresses the overlap between the systems and how decisions in each system may affect the other. OSB practice groups should team up to offer these cross-disciplinary trainings, as they may serve as an opportunity to not only build knowledge but also build important relationships across these systems.

Findings & Recommendations: Task Force Implementation

At the national, state, and local level the interconnectedness of the juvenile court, child welfare, and community stakeholder systems is widely recognized. Changes in one entity will affect the success of all related systems.¹⁵² By relying on a model that included participants from all three branches of government, this Task Force has crafted recommendations designed to improve not only the dependency system, but also the child welfare system as a whole.

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 the a three-branch process and principles of due process and better outcomes, this Task Force came together to look beyond the status quo and truly promote change and appropriate compromise for the sake of better outcomes for Oregon children and families.

It is the strong hope of this Task Force that this important work not be relegated to a report that sits on the shelf. For this reason, the Task Force offers the following findings and recommendations, crafted to promote the implementation of its other findings and recommendations, as well as the ongoing exploration of opportunities for systemic changes that will support effective and efficient dependency representation and improve outcomes for Oregon children and families.

1. Findings

A 2014 Work Group on Juvenile Court Dependency Proceedings identified barriers to permanency specific to the dependency system, and found that:

“[I]n order to effect more substantial improvement for children and families involved in the juvenile system, improved legal representation for all parties and a judiciary with sufficient time

and resources is needed to give parents and children the attention and priority that they deserve.”¹⁵³

This Task Force builds on the efforts of the 2014 work group by setting forth clear recommendations to improve legal representation and enhance judicial resources for the dependency system. This report creates a road map for a better dependency system. In order to realize the shared goals of ensuring the fair and consistent treatment of parents and children in Oregon and giving the dependency system the attention that it deserves, this report must be implemented purposefully and with an eye toward increasing system efficiencies.

2. Recommendations

Recommendation: A voluntary subset of Task Force members should continue to meet regularly to implement the recommendations of this report. This voluntary group, comprised of Task Force members and stakeholders, will monitor and support the implementation of this report. This group will also work closely with judicial leadership and the JCIP, as well as the DOJ, DHS, OPDS, and DAs, to assess current laws and policies (including, but not limited to, Oregon Administrative Rules, Uniform Trial Court Rules, and Child Welfare Policies and Procedures), and promote changes that will support the implementation of these recommendations, improve system efficiency, and promote cost savings. The voluntary group may also explore areas for further inquiry listed below, develop recommendations and implement substantive practice changes.

Findings: Areas for Further Inquiry

In order to support the model recommendations described above, the Task Force, through its subcommittees and at the direction of the Legislature in S.B. 222, also assessed discrete system areas that affect the overall practice of dependency representation, including: issues with regard to the unlawful practice of law, performance standards, quality assurance and continuous quality improvement measures, and improved crossover case practice. Findings and recommendations are provided below.

Supporting Juvenile Courts

1. Findings

As described by the National Council of Juvenile and Family Court Judges:

“Judging in juvenile court is specialized and complex, going beyond the traditional role of the judge. Juvenile court judges, as the gatekeepers to the foster care system and guardians of the original problem-solving court, must engage families, professionals, organizations and communities to effectively support child safety, permanency, and well-being.”¹⁵⁴

Oregon, like many states, has adopted judicial time lines and strives to achieve a one-judge-one-family model. Training and resources, however, continue to be a concern both in Oregon and nationally, with national organizations continuing to highlight these needs.¹⁵⁵ In 2011, the National Council for Juvenile

⁹ The USDHHS recommends that “state legislatures ensure that courts handling child abuse and neglect cases are well organized [sic] to achieve the goals of child safety, permanency, and health”⁹ and provides the following commentary:

“The quality of the judicial decision-making process depends, to a large extent, on characteristics of judicial organization and structure. For example, it is important that the same court (and judge) hears all stages of a child abuse or neglect case. It is equally important that judges and attorneys receive specialized training concerning child welfare cases; that there are comprehensive deadlines governing the court process; and that the judiciary and bar handling child welfare cases are specialized in child welfare or other family matters. It is essential that adequate resources are

and Family Court Judges stated: "Juvenile and family courts must be appropriately supported. Courts must maintain a sufficient number of specially trained and permanently assigned judicial officers, staff, attorneys and guardians *ad litem* to thoroughly and effectively conduct the business of the court."¹⁵⁶

Trainings have been shown to be particularly important and effective. One national training curriculum, the Child Abuse and Neglect Institute (CANI), provides instruction in best practices for judicial officers who have either been newly assigned to child abuse and neglect cases or for experienced juvenile dependency judges who would like to learn about emerging and promising practices in this field.¹⁵⁷ Assessments of the efficacy of this training have shown that judges who attend not only learn from the training but change their decision-making behavior in a way that improves the dependency court process.[†]

The root of strong judicial practice, however, remains adequate judicial resources.¹⁵⁸ A recent workload study of Oregon's courts by the National Center for State Courts (NCSC), (reports forthcoming), found that most Oregon's courts do not have as many judicial officers as they need to process their caseloads. Observations of dependency hearings found that hearings often do not cover key items regarding the child's needs and well-being and parents' progress. Analysis of the data collected in court and discussions in a series of juvenile judge focus groups led NCSC to make the following best practice recommendations for dependency hearings in Oregon:

- Shelter hearings: 25 minutes
- Jurisdiction/Disposition hearings: 30 minutes
- Permanency hearings: 30 minutes
- Review hearings: 30 minutes

Data from the NCSC's court observations and workload study, as well as data drawn from OJD's OJIN and Odyssey case management systems, show that durations of hearings, particularly shelter and permanency hearings, fall well short of the estimated times needed to cover all essential items (including the necessary off-bench time to complete orders, judgments and related judicial findings). In focus groups, juvenile judges reported they often lack enough off-bench time to thoroughly review court reports and other materials ahead of their hearings.

Developing a Dedicated Work Force

1. Findings

The role of a dependency attorney is unique:

available to the courts, including adequate staffing levels for judges and attorneys in child protection cases. State legislatures can either determine or have a major influence on each of these issues."[†]

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, GUIDELINES FOR PUBLIC POLICY AND STATE LEGISLATION GOVERNING PERMANENCY FOR CHILDREN, IV-2 (1999).

[†] Specifically after the training, participants were more likely to

- appoint a CASA for the child;
- order services for the mother;
- recommend that the child be placed with the father;
- cite the child's risk of harm as an important piece of information to be considered in their orders and findings;
- request additional information regarding the child's well-being, specifically relating to the child's physical and emotional well-being; and
- an increase in Indian Child Welfare Act (ICWA) inquiries.

ALICIA DeVault, LORIE SICAFUSE, & ALICIA SUMMERS, RESEARCH REPORT: 2014 CHILD ABUSE AND NEGLECT INSTITUTE IN RENO, NV 5 (2014), available at <https://rcdvcpc.org/view-resources-temporary/43-research-report-2014-child-abuse-and-neglect-institute.html>.

“When a parent takes a child to a physician who specializes in pediatric medicine, the parent expects that the pediatrician has had the benefit of specialized training in the diagnosis and treatment of children. A child in need of legal representation should, in the same way, benefit from a lawyer’s specialized training in the law and practice particular to children. Programs are needed to train pediatric lawyers so that they will be confident in their ability to provide the finest legal representation to their young client.”¹⁵⁹

Although this statement directly addresses the need for specialized attorneys for children, it is equally applicable to parent and government dependency practitioners.

Law schools across the country have multidisciplinary child welfare and family defense clinics that train future practitioners through rigorous programs that combine classroom learning, supervised direct client representation, and externship opportunities.¹⁶⁰ The literature describes the various ways that the child advocacy and family defense programs train qualified practitioners and improve dependency practice across a system.¹⁶¹ Descriptions of child advocacy programs show that these academic laboratories not only develop cohorts of skilled and dedicated dependency practitioners, but they also often serve as important centers for practice innovation, policy development, and training and technical assistance for seasoned practitioners.¹⁶² Although law schools in Oregon have some components of a successful child advocacy clinical law programs, none of the Oregon law schools offers a complete training program for students interested in dependency practice.

Decreasing Disproportionality

1. Findings

In Oregon, African American/Black children and American Indian/Alaskan Native (“AI/AN”) children are disproportionately represented in the foster care system. For example, the 2014 DHS Child Data handbook reports that, although African American/Black children comprise 3.3% of Oregon’s child population, they constitute 6.7% of the children in foster care; AI/AN children are 1.6% of the child population, but 5.6% of the children in foster care.¹⁶³ In 2011, the Oregon Governor’s Task Force on Disproportionality in Child Welfare found that:

“Foster care in Oregon is used much more often and for much longer periods of time for African American and American Indian/Alaskan Native children than for white children. The overrepresentation of children, families and communities of color in Oregon’s foster care system represents both a serious social injustice and an economic emergency. But it also offers an opportunity for Oregon to lead the charge in eliminating this persistent and complex nationwide problem.”¹⁶⁴

The 2011 Task Force took the strong position that reducing disproportionality “must be a priority for the State and for the Legislature” for two important reasons:

- The unacceptable human impact to African American and Native American children who languish in the foster care system and their families; and
- The financial consequences to the state and its citizens when disadvantaged children become part of a system that will virtually guarantee a further decline in opportunities available to them when they exit the system.¹⁶⁵

This Task Force heeds the findings of the Disproportionality Task Force and recognizes that, in addition to the DHS, attorneys for all parties in dependency proceedings play an important role in Oregon’s efforts to eliminate this persistent and complex problem.

Improving ICWA Compliance

1. Findings

In 1978, Congress enacted the Indian Child Welfare Act (ICWA) in response to a national crisis in which an alarmingly high percentage of American Indian and Alaska Native (AI/AN) children were being removed from their families and tribal communities and placed in non-Native homes. ICWA creates unique jurisdictional rules,¹⁶⁶ guarantees parents access to legal representation¹⁶⁷, and assigns enhanced legal responsibilities to states, including heightened evidentiary standards, an active efforts standards, rather than reasonable efforts standard, and a qualified expert witness requirement.¹⁶⁸ Additionally, under ICWA, a child's tribe is eligible to intervene as a party in state child welfare proceedings.¹⁶⁹ In Oregon, tribal child welfare workers need not be attorneys to appear in court and represent the Tribe's interest in a case.¹⁷⁰ Unfortunately, significant barriers still stand in the way of tribes' ability to intervene in these cases, including inadequate or late notice, *pro hac vice* requirements, and attorney costs.

DHS and dependency practitioners strive to adhere to the requirements of ICWA and identify all eligible children. "Oregon works closely with the federally recognized tribes to ensure ICWA standards are applied and tribes are involved in the decisions about these children."¹⁷¹ Yet, in spite of these efforts, ICWA-eligible children are still over-represented in the Oregon child welfare system. In 2014, a total of 562 children served in foster care were ICWA eligible. This was 4.9% of all children served in foster care, whereas American Indian or Alaskan Native children are only 1.6% of the children in Oregon.¹⁷² National organizations attribute this continued overrepresentation to misunderstandings about the law and a lack of adequate ICWA training.¹⁷³

Appendices

Appendix A: Problem Statement and Scope

The State of Oregon is committed to protecting children and supporting families. Strong families and healthy children are the heart of our communities and the future of our state. It is the policy of the State of Oregon to safeguard and promote each child's right to safety, stability, and well-being. The State of Oregon also recognizes the importance of a child's relationships with parents and other relatives. Although there is a strong preference that children live in their own homes, when this is not possible, the State of Oregon has the obligation to create or provide an alternative, safe, and permanent home for the child. These rights and responsibilities are safeguarded by the attorneys who represent children, parents, the state, and the Department of Human Services (DHS) in dependency cases in Oregon's Juvenile Court system and by Court Appointed Special Advocates (CASAs), who advocate for the best interests of children.

As a matter of justice, it is paramount that the model for legal representation provides efficient and effective legal services to all parties. These services should guarantee that judges hear balanced and complete evidentiary presentations and legal arguments, that legal issues that arise are effectively addressed, and that clients have access to legal advice throughout the duration of a case. The model must ensure that all parties have competent representation and a full, fair, and expeditious hearing. In addition, the model must ensure that the interests and rights afforded to parties in juvenile dependency proceedings are protected and safeguarded and that the proceedings comport with the principles of due process.

Currently in Oregon, nine of every 1,000 children are removed from their homes where they remain in care, on average, just over 19 months. Of the children in care, more than one-third move between three or more placements and more than one-third still await permanency after 24 months in the system. The model for legal representation in Oregon should, without sacrificing the demands of due process, promote the outcomes the Oregon child welfare system strives to achieve. To that end, the Task Force will study and report on the effects that prospective models for legal representation are likely to have on such outcomes, including outcomes related to prevention, stability in out-of-home care, and timely permanency.

In the current model for dependency case representation, District Attorneys, represent the State of Oregon at initial dependency proceedings (with the exception of Multnomah County, where the DA receives \$2.6 million from DHS to also represent the agency at TPR proceedings). DAs primarily fund their own work but are eligible for a pro-rated share of \$2.1 million in supplemental payments from DHS and may enter into agreements to receive Title IV-E federal reimbursement for approximately 32% of their expenses. The Department of Justice (DOJ) represents DHS. DHS is billed at \$175 per hour for DOJ legal assistance. The Office of Public Defense Services (OPDS) contracts with attorneys to represent children and parents; payment is based on attorney participation in court proceedings. The average payment from OPDS to a parent or child's attorney is \$792 for cases handled from the initial appointment through disposition, \$339 for each post-dispositional proceeding (for example, review hearings, Citizen Review Board proceedings and permanency hearings), and \$2,581 for representation in TPR cases. In addition, OPDS makes available limited funds for investigators and expert witnesses for necessary and reasonable expenses for case presentation, preparation, and negotiation.

The legislature allocates the larger DHS budget. From this budget, DHS must pay DOJ based on its hourly charges and supplement the work of the DAs. The cost of the current system has forced DHS to make difficult decisions about when to seek legal advice and request representation in court. The legislature also allocates the larger OPDS budget. From this budget OPDS must support the work of over 300 attorneys who represent parents and children across the state. The current OPDS payment model, based on court proceeding participation, does not accurately reflect the workload and performance obligations required of attorneys who represent parents and children.⁵ A constraint on resources and the prevailing billing model in the current system require parent and child's attorneys to take on unmanageable caseloads to support themselves or their agencies. In addition, Oregon CASA programs have inadequate access to legal counsel. The availability of judicial resources for dependency cases also affects this model.

Varied interpretations of Oregon's unlawful practice of law statute have led to increased requirements and, in turn, increased costs for DHS representation in some counties and increased workloads for DOJ attorneys. At the same time inadequate financial support and difficult decisions about public safety have caused some DAs to withdraw from their role representing the state in initial dependency proceedings. In response to these developments, the legislature recognized these challenges and mitigated the risk of unlawful practice of law by DHS case workers through Oregon Laws 2014 Chapter 106 (H.B. 4156). Also recognizing the importance of meaningful parent representation, the legislature supported pilot projects allowing OPDS to implement national best practices in two Oregon counties. The sunset of H.B. 4156 and the recent start of the pilot projects provided momentum for this Task Force. The Task Force is charged to assess the current state of legal representation in Juvenile Court dependency cases and recommend a model for legal representation that will improve outcomes for and fulfill the state's responsibility to provide justice for Oregon children and families.

To fulfill this undertaking the Task Force will:

- Identify the current obstacles to providing quality cost-effective, outcome-oriented legal representation in Oregon dependency cases.
- Survey the practices of other states, assess the practices across Oregon counties, and identify those practices that have the potential to support good outcomes for Oregon families in each jurisdiction.
- Review statutes and case law on the unauthorized practice of law in order to achieve an appropriate balance between the objectives of protecting case workers and the state of Oregon from unnecessary liability and ensuring that only qualified attorneys provide legal advice and services in dependency proceedings.
- Create subcommittees to consider the use of performance standards, protocols for crossover cases, and quality assurance to support the larger goal.

The Task Force will then make recommendations regarding the laws, policies, standards, intergovernmental agreements, and funding that govern dependency practice. These recommendations will support the implementation of a cost-effective, outcome-oriented business model of dependency representation that will improve outcomes for and fulfill the state's responsibility to Oregon children and families.

⁵ The Oregon State Bar Performance Standards require that attorneys for parents and children provide ongoing legal advocacy, including regular client contact, attendance at case-related meetings, and independent investigation throughout the life of the case, regardless of the number of in-court proceedings.

Appendix B: Subcommittee Assignments

Subcommittee- Scope	Membership- (Chairs in Bold)
<p>Performance Standards- Determine the need and/or continued need for performance standards for attorneys representing children, parents, the agency and the state. Review best practices in Oregon and nationally. Make general recommendations to be discussed/adopted by the Task Force regarding performance standards and the <i>general</i> content or content changes needed to create new or improve current performance standards.</p>	<p>Angela Sherbo, YRJ Amy Benedum, OJD Lori Fellows, Mult. Co. DA Joanne Southey, DOJ Lynn Travis, CASA</p>
<p>Quality Assurance- Determine the need for quality assurance measures and continuous quality improvement efforts for Oregon's dependency representation system (and/or its individual parts: parent/child representation and state/agency representation). Review best practices in Oregon and nationally. Make general recommendations to be discussed/adopted by the Task Force regarding quality assurance, the <i>general</i> content of quality assurance measures and methods for continuous quality improvement, and the entity(ies) most appropriate to oversee these processes.</p>	<p>Leola McKenzie, OJD Lori Fellows, Mult. Co. DA Mimi Laver, ABA Center on Children & Law Amy Miller, OPDS Conor Wall, OJD Jason Walling, DHS Inge Wells, DOJ</p>
<p>Crossover Cases- Determine the need for cross over case protocols in Oregon. Review promising crossover case practice in Oregon and nationally. Make recommendations to be discussed/adopted by the Task Force for improved cross over case practice for state, agency, and youth attorneys.</p>	<p>Hon. Nan Waller, Mult. Co. Megan Hassen, OJD Torri Lynn, OJDDA Brendan Murphy, Marion Co. DA Joe O'Leary, OYA Liz Wakefield, Metro Public Defender Svs. Jason Walling, DHS Kamala Shugar, DOJ</p>
<p>Unlawful Practice of Law- Review current dependency practice in light of statutes and case law on the unauthorized practice of law. Provide recommendations to be discussed/adopted by the Task Force that promote an appropriate balance between protecting case workers and the State from unnecessary liability and ensuring that when necessary, qualified attorneys provide legal services in dependency proceedings.</p>	<p>Hon. Daniel Murphy, Linn Co. Hon. Justice David Brewer Hon. Lisa Fithian-Barrett, Mult Co. Hon. Norm Hill, Polk Co. Valerie Colas, OPDS Amber Hollister, OSB District Attorney Matt Shirtcliff, Baker Co. Joanne Southey, DOJ</p>
<p>Alternative Models- Review the practice, cost, and outcomes of models of state/agency and parent/child representation used by Oregon and other states. Compare and contrast these models of representation to the current Oregon model. Assess alternative models of representation used nationally or endorsed by standard setting organizations. Present to the Task Force for further discussion information on what models save cost, protect due process, and promote outcomes. Present to the Task Force for further discussion information about how various models meet the needs and/or unique nature of Oregon dependency proceedings.</p>	<p>Professor Leslie Harris Representative Kathleen Taylor Michael Livingston Fred Boss, DOJ Nancy Cozine, OPDS Mimi Laver, ABA Center on Children & Law Dani Ledezma, Office of Gov. Brown Mark McKechnie, YRJ Leola McKenzie, OJD Channa Newell, Judiciary Committee Counsel District Attorney Rod Underhill, Mult. Co Ryan Vogt, DHS</p>

¹ CENTER ON CHILDREN AND THE LAW, AMERICAN BAR ASSOCIATION, SUMMARY OF PARENT REPRESENTATION MODELS 1 (2009) [hereinafter *ABA Summary*].

² ADMINISTRATION FOR CHILDREN AND FAMILIES: CHILDREN'S BUREAU, U.S. DEPT. OF HEALTH AND HUMAN SERVICES, STANDARDS OF LEGAL REPRESENTATION FOR CHILDREN, PARENTS, AND THE CHILD WELFARE Agency 2 <http://www.acf.dhhs.gov/programs/cb/publicatoins/adopt02/02adpt7.htm> (last visited Nov. 2, 2005) [hereinafter *DHHS Standards*].

³ *Id.*

⁴ VIVEK S. SANKARAN, PATRICIA L. RIDEOUT & MARTHA L. RAIMON, STRANGE BEDFELLOWS: HOW CHILD WELFARE AGENCIES CAN BENEFIT FROM INVESTING IN MULTIDISCIPLINARY REPRESENTATION (2015), available at <http://www.cssp.org/reform/child-welfare/strange-bedfellows-how-child-welfare-agencies-benefit-from-multidisciplinary-parent-representation.pdf>.

⁵ Jillian Cohen & Michelle Cortese, *Cornerstone Advocacy in the First 60 Days: Achieving Safe and Lasting Reunification for Families*, 28 ABA CHILD LAW PRACTICE 1 (May 2009).

⁶ CENTER ON CHILDREN AND THE LAW, AMERICAN BAR ASSOCIATION, INVESTMENT THAT MAKES SENSE 2-3, available at http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/At-a-glance%20final.authcheckdam.pdf (last visited July 5, 2016) [hereinafter *Investment that Makes Sense*]

⁷ Elizabeth Thorton & Betsy Gwin, *High-Quality Legal Representation for Parents in Child Welfare Cases Result in Improved Outcomes for Families and Potential Cost Savings* 46 FAM. L. Q. 139-54 (Spring 2012); MARK COURTNEY, JENNIFER L. HOOK, & MATT ORME, PARTNERS FOR OUR CHILDREN, EVALUATION OF THE IMPACT OF ENHANCED PARENTAL LEGAL REPRESENTATION ON THE TIMING OF PERMANENCY OUTCOMES FOR CHILDREN IN FOSTER CARE, available at https://partnersforourchildren.org/sites/default/files/2011_evaluation..._impact_of_enhanced_parental_legal_representation....discussion_paper.pdf.

⁸ THE CENTER FOR FAMILY REPRESENTATION, 2013 REPORT TO THE COMMUNITY, available at <https://www.cfrny.org/wp-content/uploads/2013/11/CFR-2013-Report-to-the-Community.pdf> [hereinafter *CFR 2013 Report*]; *Investment that Makes Sense*, *supra* note 6.

⁹ ANDREW ZINN & JACK SLOWRIVER, EXPEDITING PERMANENCY: LEGAL REPRESENTATION FOR FOSTER CHILDREN IN PALM BEACH COUNTY (2008), available at <http://www.chapinhall.org/research/report/expediting-permanency>; Thorton & Gwin *supra* note 7; Courtney, Hook, & Orme *supra* note 7.

¹⁰ *CFR 2013 Report*, *supra* note 8.

¹¹ *Investment that Makes Sense*, *supra* note 6, at 3.

¹² INDIGENT TASK FORCE III, REPORT 8-9 (2000), available at <https://www.osbar.org/docs/idthf/idthf3.pdf>.

¹³ OFFICE OF THE SECRETARY OF THE STATE, 2005 OPDS AUDIT 2, available at <http://sos.oregon.gov/Documents/audits/management/2005/404-2005-02-01.pdf>.

¹⁴ Senate Bill 411 (2007); see Ingrid Swenson, *Memorandum: Representation of Parents and Children in Juvenile Dependency Cases* (2011), available at <http://www.oregon.gov/OPDS/docs/Agendas/07-28-11.pdf> (detailing and discussing S.B. 411 (2007)).

¹⁵ *Id.*

¹⁶ See PARENT CHILD REPRESENTATION PROGRAM, ANNUAL REPORT 2014-2015 (2016), available at https://www.oregon.gov/OPDS/docs/Reports/PCRP_report_PDSC_Jan_2016.pdf.

¹⁷ *Id.*

¹⁸ See, e.g., *ABA Summary*, *supra* note 1.

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ CENTER ON CHILDREN AND THE LAW, AMERICAN BAR ASSOCIATION, COURT IMPROVEMENT PROGRAM PARENT ATTORNEY SURVEY RESULTS 6 (2011).

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²⁴ MIMI LAVER, AMERICAN BAR ASSOCIATION CHILDREN'S RIGHTS LITIGATION, IMPROVING REPRESENTATION FOR PARENTS IN THE CHILD-WELFARE SYSTEM (Oct. 2013), available at <http://apps.americanbar.org/litigation/committees/childrights/content/articles/fall2013-1013-improving-representation-parents-child-welfare-system.html>; Don Duquette with Julien Darwall, *Child Representation in America: Progress Report from the*

National Quality Improvement Center, 41 FAM. L. Q. 87, 113-14 (Spring 2009); AMERICAN BAR ASSOCIATION, STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES 32, available at http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStds.authcheckdam.pdf [hereinafter *ABA Parent Representation Stds.*]; AMERICAN BAR ASSOCIATION, STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING CHILDREN IN ABUSE AND NEGLECT CASES 21 (1996), available at http://www.americanbar.org/content/dam/aba/migrated/family/reports/standards_abuseneglect.authcheckdam.pdf [hereinafter *ABA Child Representation Stds.*].

²⁵ *Parent Attorney National Compensation Survey*, *supra* note 22, at 1.

²⁶ *Id.*

²⁷ *ABA Child Representation Stds.*, *supra* note 24, at 22.

²⁸ *Parent Attorney National Compensation Survey*, *supra* note 22, at 2.

²⁹ MARTIN GUGGENHEIM & VIVEK S. SANKARAN, REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS (2015); Cohen & Cortese, *supra* note 5; *ABA Parent Representation Stds.*, *supra* note 24; *ABA Child Representation Stds.*, *supra* note 24.

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³¹ *Parent Attorney National Compensation Survey*, *supra* note 22, at 6.

³² See, e.g., Don Duquette and Ann M. Haralambie, *Representing Children and Youth*, in CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS AND STATE AGENCIES IN ABUSE, NEGLECT AND DEPENDENCY CASES (Duquette, Haralambie, and Sankaran eds., 2016).

³³ Trine Bech, Mark Briggs, Elizabeth Bruzzo, Tracy E. Green & Christie Marra, *The Importance of Early Attorney Involvement in Child Welfare Cases: Representation of Parents in Pre-Petition Proceedings* (Second National Parents' Attorney Conference, July 13-14, 2011), available at http://webcache.googleusercontent.com/search?q=cache:HAea8JrA1RwJ:www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/ImportanceofEarlyAttorneyInvolvement.doc+&cd=1&hl=en&ct=clnk&gl=us [hereinafter *Bech et al.*]; see also, Jane M. Spinak, *Reforming Family Court: Getting It Right Between Rhetoric and Reality*, 31 WASH. U. J. L. & POL'Y 11, 36 (2009); Diane B. Rauber, *From Courthouse to Statehouse: Parents as Partners in Child Welfare* 28 ABA CHILD LAW PRACTICE 161 (Jan. 2010); *ABA Summary*, *supra* note 1 (describing New York and Michigan models of pre-petition representation).

³⁴ *ABA Summary*, *supra* note 1 (describing New York and Michigan models of pre-petition representation); Rauber, *supra* note 30.

³⁵ Meghan Scahill, *Prosecuting Attorneys in Dependency Proceedings in Juvenile Court: Defining and Assessing a Critical Role in Child Abuse Cases*, 1 J. OF THE CENTER FOR CHILDREN AND THE COURTS 73 (1999).

³⁶ David J. Herring, *Legal Representation for the State Child Welfare Agency in Civil Child Protection Proceedings: A Comparative Study*, 24 U. TOL. L. REV. 603, 611-12 (1993).

³⁷ JOINT INTERIM TASK FORCE ON JUVENILE DEPENDENCY PROCEEDINGS, FINAL REPORT 8 (2014), available at https://www.oregon.gov/gov/policy/Documents/LRCD/Meeting2_112315/Background_on_the_issue/ReportJointInterimTaskForceOnJuvenileDependencyProceedings.pdf.

³⁸ Herring, *supra* note 36, at 603.

³⁹ See, generally, Herring, *supra* note 36.

⁴⁰ CENTER ON CHILDREN AND THE LAW, AMERICAN BAR ASSOCIATION, STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILD WELFARE AGENCIES 1 (2004) [hereinafter *ABA Agency Representation Stds.*].

⁴¹ *Id.* at 2.

⁴² *Id.* at 3-4.

⁴³ *Id.* at 4.

⁴⁴ Herring, *supra* note 36; Scahill, *supra* note 35; Mimi Laver, *Agency Attorneys and Caseworkers: Working Well Together*, in CHILD WELFARE LAW AND PRACTICE 565 (Ventrell & Duquette eds., 2005); MIMI LAVER & CLAIRE SANDT, FOUNDATIONS FOR SUCCESS: STRENGTHENING YOUR AGENCY ATTORNEY OFFICE (1999); *DHHS Standards*, *supra* note 2.

⁴⁵ Herring, *supra* note 36.

⁴⁶ *Id.* at 25-27

⁴⁷ *Id.*

⁴⁸ *Id.*

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- ⁴⁹ Ramone Ruiz and Scott Trowbridge, *National Child Welfare Resource Center on Legal and Judicial Issues: National Survey of Child Welfare Legal Representation Issues 6-7* (2009), available at http://www.americanbar.org/content/dam/aba/administrative/child_law/nrclji/NationalSurveyofRepresentationModeIs.doc.
- ⁵⁰ *Id.*
- ⁵¹ *ABA Agency Representation Stds.*, *supra* note 40, at 7.
- ⁵² *Id.* at 8.
- ⁵³ *Id.* at 9.
- ⁵⁴ *Id.* at 10.
- ⁵⁵ *Id.* at 6-7.
- ⁵⁶ *Id.* at 14.
- ⁵⁷ See TASK FORCE ON LEGAL REPRESENTATION IN CHILDHOOD DEPENDENCY, GOVERNMENT ATTORNEY STRUCTURED INTERVIEWS (2016) available at http://www.oregon.gov/gov/policy/Documents/LRCD/Meeting8_051116/Alternative_Models_Materials/State_Attorney_Manager_Interview_Results.pdf [hereinafter *Govt Atty Interviews*].
- ⁵⁸ See *Govt Atty Interviews*, *supra* note 57.
- ⁵⁹ See TASK FORCE ON LEGAL REPRESENTATION IN CHILDHOOD DEPENDENCY, STATE SURVEY RESULTS (2015), available at <http://www.oregon.gov/gov/policy/Pages/LRCD-Meetings-and-Materials.aspx> [hereinafter *Survey Results*].
- ⁶⁰ *ABA Agency Representation Stds.*, *supra* note 40, at 8.
- ⁶¹ *DHHS Standards*, *supra* note 2, at 5-6.
- ⁶² *ABA Agency Representation Stds.*, *supra* note 40, at 19.
- ⁶³ See *Govt Atty Interviews*, *supra* note 57, Executive Summary (noting that “the two states with caseloads over 130 were both actively advocating for budget increases to decrease their caseload”).
- ⁶⁴ *Id.*
- ⁶⁵ *Id.*
- ⁶⁶ See *Id.*
- ⁶⁷ Scahill, *supra* note 35, at 80.
- ⁶⁸ *ABA Agency Representation Stds.*, *supra* note 40, at 4; see also Scahill, *supra* note 35.
- ⁶⁹ See *Govt Atty Interviews*, *supra* note 57.
- ⁷⁰ See *Survey Results*, *supra* note 58.
- ⁷¹ *Id.*
- ⁷² Herring, *supra* note 36.
- ⁷³ See *Govt Atty Interviews*, *supra* note 57.
- ⁷⁴ 42 U.S.C. § 5106a(b) (2010).
- ⁷⁵ OR. REV. STAT. § 419B.112 (2013).
- ⁷⁶ *Id.*
- ⁷⁷ Donald D. Duquette and Sarah H. Ramsey, *Using Lay Volunteers to Represent Children in Child Protection Court Proceedings (Appendix C)*, 10 CHILD ABUSE AND NEGLECT 293-308 (1986).
- ⁷⁸ NATIONAL CASA FOR CHILDREN, STANDARDS FOR LOCAL CASA/GAL PROGRAMS: STANDARD 5.A.2 (2012 Ed.).
- ⁷⁹ *Ramstead v. Morgan*, 347 P.2d 594, 601, 219 Or. 383, 399 (Or. 1959).
- ⁸⁰ *Id.*
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- ⁸⁵ OR. REV. STAT. § 9.320 (2013) (Necessity for Employment by an Attorney)(emphasis added).
- ⁸⁶ OR. REV. STAT. § 180.060(6) (2013) (“The Attorney General shall, when requested, perform all legal services for the state or any department or officer of the state.”).
- ⁸⁷ 2014 Or. Laws Chap. 106 (H.B. 4156, 77th Leg. Assemb., Reg. Sess. [Or. 2014]).
- ⁸⁸ See e.g. OR. REV. STAT. § 180.060 (2013) (outlining circumstances under which Attorney General shall represent the State); *State v. Coleman*, 886 P.2d 28, 131 Or. App. 386 (1994) (holding that district attorney’s use of two assistant attorney generals to prosecute case did not violate separation of powers).
- ⁸⁹ *Ramstead*, 219 Or. at 399.
- ⁹⁰ See *Or. State Bar v. Security Escrows, Inc.*, 377 P.2d 334, 233 Or. 80, 87 (1962) (noting that court’s regulation of practice of law is “in the public interest”).

⁹¹ OR. REV. STAT. § 9.220 (2013).

⁹² *Id.*

⁹³ OR. REV. STAT. § 9.527 *et seq.* (2013).

⁹⁴ OR. REV. STAT. § 9.112 (2013).

⁹⁵ *Security Escrows, Inc.*, 377 P.2d 334.

⁹⁶ *Or. State Bar v. Smith*, 942 P.2d 793, 149 Or. App. 171, 183 (1997), *rev. den.* 326 Or. 62 (1997).

⁹⁷ See, e.g., *Or. State Bar v. Wright*, 578 P.2d 1238, 280 Or. 693, 696 (1978) (drafting of pleadings, briefs, wills, contracts, and other legal instruments); *State ex rel. Or. State Bar v. Lenske*, 584 P.2d 759, 284 Or. 23, 31 (1978) (counseling clients about law matters and appearing in court or in formal proceedings as a part of the judicial process); *In re Morin*, 578 P.2d 393, 319 Or. 547, 563 (1994) (advising clients on legal decisions specific to the clients and using discretion in selecting legal documents to meet the clients' needs); *In re Devers*, 974 P.2d 191, 328 Or. 230 (1999) (negotiation on behalf of a client; drafting a settlement agreement or reviewing drafts on behalf of a client; accepting pleadings and discovery requests on behalf of a client).

⁹⁸ 284 at 31.

⁹⁹ Or. State Bar Bylaws § 20.1(C).

¹⁰⁰ *DHHS Standards*, *supra* note 2.

¹⁰¹ *ABA Child Representation Stds supra* note 24; *ABA Parent Representation Stds supra* note 24; CENTER ON CHILDREN AND THE LAW, AMERICAN BAR ASSOCIATION, STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILD WELFARE AGENCIES, *available at* http://www.americanbar.org/content/dam/aba/administrative/child_law/agency-standards.authcheckdam.pdf (2004) [hereinafter *ABA Agency Representation Stds.*].

¹⁰² OR. STATE BAR, REPORT OF THE TASK FORCE ON STANDARDS OF REPRESENTATION IN JUVENILE DEPENDENCY CASES Forward (June 2014), *available at* <http://www.osbar.org/docs/resources/juveniletaskforce/JTFR3.pdf> [hereinafter *OSB Report*].

¹⁰³ *ABA Agency Representation Stds.*, *supra* note 101.

¹⁰⁴ *DHHS Standards*, *supra* note 2.

¹⁰⁵ *ABA Child Representation Stds supra* note 24; *ABA Parent Representation Stds.*, *supra* note 24; *ABA Agency Representation Stds supra* note 101; *DHHS Standards supra* note 2.

¹⁰⁶ See, e.g., SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, CHILD ABUSE AND NEGLECT ATTORNEY PRACTICE STANDARDS, *available at* http://www.dccourts.gov/internet/documents/practice_standards.pdf (Feb. 2003); DIVISION OF PUBLIC DEFENDER SERVICES, STATE OF CONNECTICUT, PERFORMANCE GUIDELINES FOR COUNSEL IN CHILD PROTECTION MATTERS, *available at* http://www.ct.gov/ocpd/lib/ocpd/Child_Protection/CP_Procedures_Assigned_Counsel/Performance_Standards_For_Counsel_In_Child_Protection_Matters_FINAL_AS_APPROVED.pdf; Judicial Counsel of Virginia, Standards to Govern the Appointment of Guardians *Ad Litem*, Pursuant to VA. CODE § 16.1-266 (eff. Jan. 1995), *available at* http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/gal_standards_children.pdf; LOUISIANA PUBLIC DEFENDER BOARD, TRIAL COURT PERFORMANCE STANDARDS FOR ATTORNEYS REPRESENTING PARENTS IN CHILD IN NEED OF CARE AND TERMINATION OF PARENTAL RIGHTS CASES (2011), <http://lpdb.la.gov/Supporting%20Practitioners/Standards/txtfiles/pdfs/2011%20CINC%20Standards.pdf>.

¹⁰⁷ *OSB Report*, *supra* note 102.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

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¹¹⁴ *Id.* at v.

¹¹⁵ *Id.* at 1.

¹¹⁶ CENTER ON CHILDREN AND THE LAW, AMERICAN BAR ASSOCIATION, INDICATORS OF SUCCESS FOR PARENT REPRESENTATION 1 (2015), *available at* http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/Indicators-of-Success.authcheckdam.pdf [hereinafter *ABA Indicators of Success*].

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- ¹¹⁹ Flango & Kauder, *supra* note 113, at v.
- ¹²⁰ *Id.* at iii.
- ¹²¹ *ABA Indicators of Success*, *supra* note 115.
- ¹²² *See, e.g., id.* (describing efforts in Texas, Oklahoma, Louisiana, and Arkansas).
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- ¹²⁴ *See*, OFFICE OF PUBLIC DEFENSE SERVICES, PARENT CHILD REPRESENTATION PROJECT ANNUAL REPORT 2014-2015 (2016), available at https://www.oregon.gov/OPDS/docs/Reports/PCRP_report_PDSC_Jan_2016.pdf (reporting on performance measures such as immediate and consistent access to multidisciplinary staff, caseloads, representation out of court, shelter hearing representation, case resolution, time to permanency, and client satisfaction).
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- ¹²⁷ *Id.*
- ¹²⁸ *ABA Indicators of Success*, *supra* note 115.
- ¹²⁹ Flango & Kauder, *supra* note 113.
- ¹³⁰ *Indicators of Quality Representation for Louisiana Children's and Parents' Attorneys* (2014) available at http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/LA%20IndicatorsWeb.doc.
- ¹³¹ NATIONAL CENTER FOR STATE COURTS, COURTTOOLS: TRIAL COURT PERFORMANCE MEASURES, MEASURE 5 (2005), available at http://www.courttools.org/~media/Microsites/Files/CourTools/courttools_Trial_measure5_Trial_Date_Certainty.ashx.
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- ¹³⁶ *Id.* at 17.
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- ¹³⁸ Lutz et al., *supra* note 133, at 8.
- ¹³⁹ NATIONAL JUVENILE DEFENDER CENTER, INNOVATION BRIEF: ADDRESSING THE LEGAL NEEDS OF YOUTH AFTER DISPOSITION 1 (2014), available at <http://njdc.info/wp-content/uploads/2014/01/Post-Dispo-Inno-Brief-2013.pdf>.
- ¹⁴⁰ Herz et al., *supra* note 133, at 2.
- ¹⁴¹ *E.g., id.* at 4.
- ¹⁴² *E.g., id.* at 5.
- ¹⁴³ Lutz et al., *supra* note 133 at 8.
- ¹⁴⁴ National Juvenile Defender Center, *supra* note 139, at 2 (citing to National Juvenile Defense Standard 7.1).
- ¹⁴⁵ WILLIAM FEYERHERM & SANDY JOHNSON, JUVENILE JUSTICE AND CHILD WELFARE: ESTIMATES OF THE CROSSOVER BETWEEN OREGON'S SYSTEMS, A REPORT FOR THE YOUTH DEVELOPMENT COUNCIL 5 (2012).
- ¹⁴⁶ *Id.* at 5-7.
- ¹⁴⁷ *Id.*
- ¹⁴⁸ *Id.* at 8.
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