

# House Bill 2345

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Human Services)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Extends sunset on provision authorizing Department of Human Services to appear as party in juvenile court proceeding without appearance of Attorney General.

Directs Department of Human Services and Department of Justice to ensure full access to legal representation, legal counsel, legal advice and litigation support for Department of Human Services by Department of Justice in juvenile dependency proceedings and child welfare matters.

Directs Public Defense Services Commission to develop and maintain Parent-Child Representation Program statewide to provide legal representation in juvenile dependency proceedings based on workload model of contracting that provides for caseload limits. Requires public defense services executive director to create plan for implementation of program by January 1, 2022.

Requires Department of Human Services, Department of Justice, public defense services executive director and Judicial Department to report to Legislative Assembly and interim committees.

Requires Oregon Volunteers Commission for Voluntary Action and Service to contract with minimum of four attorneys to provide legal consultation, limited direct representation and training to CASA Volunteer Programs throughout state.

Directs Judicial Department to convene continuous quality assurance advisory committee to collect and report on quality assurance measures and engage in basic quality improvement process in juvenile dependency proceedings and child welfare matters.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to legal representation in the child welfare system; creating new provisions; amending ORS  
3 151.216 and 458.581 and section 3, chapter 106, Oregon Laws 2014; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** Section 3, chapter 106, Oregon Laws 2014, as amended by section 1, chapter 776,  
6 Oregon Laws 2015, is amended to read:

7 **Sec. 3.** Section 2, chapter 106, Oregon Laws 2014, is repealed on June 30, [2018] **2020**.

8 **SECTION 2. The Legislative Assembly finds that:**

9 **(1) The juvenile dependency representation system in Oregon faces a number of obsta-**  
10 **cles, including:**

11 **(a) Attorneys representing parents and children are burdened with excessive caseloads**  
12 **and inadequate resources, which challenge the ability of these attorneys to protect the**  
13 **statutory and constitutional rights of their clients;**

14 **(b) Inconsistent state and agency representation models, a lack of uniform practices and**  
15 **complicated financial models pose a challenge to timely and effective child welfare case**  
16 **planning and case management;**

17 **(c) Due to the diverse and vulnerable nature of the populations served, attorneys in the**  
18 **dependency system need to increase their cultural and linguistic competency and their**  
19 **awareness and use of trauma-informed approaches to client representation;**

20 **(d) The state does not provide funding for legal consultation or representation for court**  
21 **appointed special advocates or CASA Volunteer Program staff or volunteers; and**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (e) The overburdened nature of the juvenile court system hinders the effective provision  
2 of legal services for all parties in juvenile dependency proceedings.

3 (2) Obstacles to adequate and effective representation for all parties stand in the way of  
4 safety and better outcomes for Oregon's children and families.

5 (3) Access to high quality consistent representation for parents and children in juvenile  
6 dependency proceedings will:

7 (a) Protect the statutory and constitutional rights of marginalized parents and vulnerable  
8 children involved in the juvenile dependency system and improve procedural justice; and

9 (b) Improve outcomes for children and families by decreasing the time to permanency,  
10 reducing the use of foster care, decreasing unnecessary removals of children from their  
11 homes, increasing placement in kinship care and decreasing disproportionality.

12 (4) Access to high quality consistent representation in juvenile dependency proceedings  
13 for the Department of Human Services will:

14 (a) Decrease caseworkers' legal responsibilities, free time to focus on casework, client  
15 contact and the provision of services, improve outcomes, increase caseworker morale and  
16 decrease caseworker turnover;

17 (b) Reduce the risk of department employees unlawfully practicing law; and

18 (c) Provide the department with oversight and consultation that may reduce agency ex-  
19 posure to liability.

20 (5) Skilled and effective legal representation for parents, children and the department in  
21 the juvenile dependency and child welfare systems will:

22 (a) Ensure that at each hearing, a complete record is before the court, the most accurate  
23 findings are made and judgments are legally sufficient; and

24 (b) Promote a healthy adversarial system that provides the court with the balanced in-  
25 formation needed to make well-informed decisions for children and families at both the trial  
26 and appellate levels.

27 (6) Attorneys with expertise and experience in juvenile dependency practice are necessary  
28 to identify and enact child welfare system improvements at the local and state levels.

29 **SECTION 3.** (1) The Department of Human Services and the Department of Justice shall:

30 (a) Ensure that employees, caseworkers, agents and representatives of the Department  
31 of Human Services who are engaged in providing child welfare services have full access to  
32 legal representation, legal counsel, legal advice and litigation support provided by the De-  
33 partment of Justice or a department designee throughout the duration of a juvenile depend-  
34 ency proceeding and with regard to the provision of all child welfare services. Legal  
35 representation services provided by the Department of Justice must be based on a workload  
36 model with caseload limits established by the Attorney General.

37 (b) Work together to ensure that the Department of Human Services has the advice and  
38 assistance of the Department of Justice in child welfare matters, including but not limited  
39 to certification of foster homes, licensure, certification or authorization of child-caring  
40 agencies, adoption proceedings, recommendations for legislation and administrative rule  
41 creation, review and implementation.

42 (c) Collaborate to develop effective procedures for regular communication and contact  
43 between the Department of Human Services and the Department of Justice throughout the  
44 life of a juvenile dependency proceeding or with regard to all child welfare matters.

45 (2) The Department of Justice may charge the Department of Human Services pursuant

1 to ORS 180.160 and 180.170 for services rendered and costs incurred to implement subsection  
 2 (1) of this section. The charges made under this subsection may be a flat fee.

3 (3) Nothing in this section shall be construed to prohibit, prevent or interfere with a  
 4 county office of the district attorney providing representation of the state, as distinguished  
 5 from representation of the Department of Human Services, in juvenile dependency pro-  
 6 ceedings nor to eliminate the state as a party in any juvenile dependency proceeding.

7 **SECTION 4.** The Department of Human Services and the Department of Justice shall  
 8 coprepare and copresent to the interim committees of the Legislative Assembly that have  
 9 authority over the subject areas of child welfare, juvenile dependency and the judiciary a  
 10 report regarding the provision of legal representation services to the Department of Human  
 11 Services in juvenile dependency proceedings and in child welfare matters in all counties of  
 12 this state no later than September 15, 2017. The report must include a plan for implementing  
 13 the provisions of section 3 of this 2017 Act that takes into account county-based need, read-  
 14 iness, regional impact and fiscal effect and has a timeline for implementation with full im-  
 15 plementation occurring by January 1, 2019.

16 **SECTION 5.** (1) The Public Defense Services Commission established under ORS 151.213  
 17 shall develop and maintain a Parent-Child Representation Program for the delivery of legal  
 18 services in juvenile dependency proceedings to persons who are entitled to and financially  
 19 eligible for court-appointed counsel at state expense.

20 (2) The public defense services executive director appointed under ORS 151.216 shall cre-  
 21 ate a plan for full implementation of the program by January 1, 2022. The plan must take into  
 22 account county-based need, readiness, regional impact and fiscal effect.

23 (3) The executive director shall negotiate contracts for legal services in juvenile depend-  
 24 ency proceedings based on a workload model of contracting that provides for caseload limits  
 25 consistent with caseload limits adopted by the commission by rule.

26 (4)(a) The commission shall adopt policies, procedures, standards and guidelines for the  
 27 program that include a workload model of contracting with caseload limits. The office of  
 28 public defense services established under ORS 151.216 shall employ managing attorneys to  
 29 coordinate and oversee program management and evaluation, and ensure contract compli-  
 30 ance.

31 (b) The policies, procedures, standards and guidelines adopted by the commission must  
 32 ensure that, in complicated cases, attorneys who provide representation in juvenile depend-  
 33 ency proceedings to persons entitled to and financially eligible for court-appointed counsel  
 34 at state expense have access to social service professionals to identify and resolve nonlegal  
 35 barriers to successful case resolution.

36 (5) The executive director shall present to the Legislative Assembly, as part of the  
 37 biennial report required by ORS 151.219 (1)(j), recommendations regarding the appropriate  
 38 number of attorneys and case managers needed to provide effective and competent legal  
 39 services in juvenile dependency proceedings based on a workload model of contracting in  
 40 accordance with this section.

41 **SECTION 6.** The public defense services executive director appointed under ORS 151.216  
 42 shall prepare and submit to the interim committees of the Legislative Assembly that have  
 43 authority over the subject areas of child welfare, juvenile dependency and the judiciary a  
 44 report regarding the plan to implement the Parent-Child Representation Program statewide  
 45 as required under section 5 of this 2017 Act. The report must be made on or before Septem-

1 **ber 15 of each year, beginning on September 15, 2017, and ending on September 15, 2021. The**  
 2 **report must include updates on implementation of the plan required under section 5 of this**  
 3 **2017 Act.**

4 **SECTION 7.** ORS 151.216 is amended to read:

5 151.216. (1) The Public Defense Services Commission shall:

6 (a) Establish and maintain a public defense system that ensures the provision of public defense  
 7 services in the most cost-efficient manner consistent with the Oregon Constitution, the United States  
 8 Constitution and Oregon and national standards of justice.

9 (b) Establish an office of public defense services and appoint a public defense services executive  
 10 director who serves at the pleasure of the commission.

11 (c) Submit the budget of the commission and the office of public defense services to the Legis-  
 12 lative Assembly after the budget is submitted to the commission by the director and approved by the  
 13 commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall  
 14 present the budget to the Legislative Assembly.

15 (d) Review and approve any public defense services contract negotiated by the director before  
 16 the contract can become effective.

17 (e) Adopt a compensation plan, classification system and personnel plan for the office of public  
 18 defense services that are commensurate with other state agencies.

19 (f) Adopt policies, procedures, standards and guidelines regarding:

20 (A) The determination of financial eligibility of persons entitled to be represented by appointed  
 21 counsel at state expense;

22 (B) The appointment of counsel;

23 (C) The fair compensation of counsel appointed to represent a person financially eligible for  
 24 appointed counsel at state expense;

25 (D) Appointed counsel compensation disputes;

26 (E) Any other costs associated with the representation of a person by appointed counsel in the  
 27 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,  
 28 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,  
 29 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any  
 30 other provision of law that expressly provides for payment of such compensation, costs or expenses  
 31 by the commission;

32 (F) Professional qualifications for counsel appointed to represent public defense clients;

33 (G) Performance for legal representation;

34 (H) The contracting of public defense services;

35 (I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses  
 36 only if in-state expert witnesses are not available or are more expensive than out-of-state expert  
 37 witnesses; and

38 (J) Any other matters necessary to carry out the duties of the commission.

39 (g) Establish a peer review system for the approval of nonroutine fees and expenses incurred in  
 40 cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The review  
 41 shall be conducted by a panel of attorneys who practice in the area of criminal defense.

42 (h) Establish a complaint process that allows district attorneys, criminal defense counsel and the  
 43 public to file complaints concerning the payment from public funds of nonroutine fees and expenses  
 44 incurred in cases.

45 (i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services

1 Account established by ORS 151.225 for the costs of personnel and other costs associated with lo-  
 2 cation of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court  
 3 Administrator.

4 **(j) Develop and maintain the Parent-Child Representation Program under section 5 of**  
 5 **this 2017 Act.**

6 (2) Policies, procedures, standards and guidelines adopted by the commission supersede any  
 7 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-  
 8 tor, circuit courts, the Court of Appeals, the Supreme Court, the Psychiatric Security Review Board  
 9 and the Oregon Health Authority related to the exercise of the commission’s administrative re-  
 10 sponsibilities under this section and transferred duties, functions and powers as they occur.

11 (3) The commission may accept gifts, grants or contributions from any source, whether public  
 12 or private. However, the commission may not accept a gift, grant or contribution if acceptance  
 13 would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the  
 14 Public Defense Services Account established by ORS 151.225 and expended for the purposes for  
 15 which given or granted.

16 (4) The commission may not:

17 (a) Make any decision regarding the handling of any individual case;

18 (b) Have access to any case file; or

19 (c) Interfere with the director or any member of the staff of the director in carrying out pro-  
 20 fessional duties involving the legal representation of public defense clients.

21 **SECTION 8.** ORS 458.581 is amended to read:

22 458.581. (1) The Oregon Volunteers Commission for Voluntary Action and Service shall:

23 (a) Contract with all CASA Volunteer Programs in this state to recruit, train and supervise  
 24 court appointed special advocates.

25 (b) Disburse and expend moneys in the Court Appointed Special Advocate Fund established un-  
 26 der ORS 458.584 for the purposes set forth in this section and ORS 419B.112.

27 (c) Oversee the provision of court appointed special advocate services throughout this state in  
 28 a uniform, consistent and cost-efficient manner by ensuring that CASA Volunteer Programs:

29 (A) Adopt policies, procedures, standards and guidelines regarding the provision of court ap-  
 30 pointed special advocate services as directed by the commission; and

31 (B) Develop and provide training and education for court appointed special advocates and em-  
 32 ployees and other volunteers in CASA Volunteer Programs as directed by the commission.

33 (d) Identify statewide outcome or performance measures for CASA Volunteer Programs.

34 (e) Collect, evaluate and summarize data regarding CASA Volunteer Programs and court ap-  
 35 pointed special advocate services in this state.

36 **(f) Contract with a minimum of four attorneys with expertise in child welfare and juve-**  
 37 **nile dependency advocacy to provide legal consultation, limited direct representation and**  
 38 **training to CASA Volunteer Programs throughout this state in accordance with standards**  
 39 **and procedures in juvenile dependency proceedings established by rules adopted by the com-**  
 40 **mission.**

41 *[(f)]* (g) Adopt rules for carrying out the commission’s responsibilities, duties and functions un-  
 42 der this section and ORS 419B.112.

43 (2) The commission may:

44 (a) Delegate to public agencies or private nonprofit organizations the responsibility to, or con-  
 45 tract with public agencies or private nonprofit organizations to:

1 (A) Create, supervise and operate CASA Volunteer Programs throughout this state; *[and]*

2 (B) Develop and provide training for court appointed special advocates and employees and vol-  
3 unteers of CASA Volunteer Programs; **and**

4 **(C) Provide legal consultation, limited direct representation and training to CASA Vol-**  
5 **unteer Programs throughout this state in accordance with standards and procedures in ju-**  
6 **venile dependency proceedings established by rules adopted by the commission.**

7 (b) Consult with public agencies or private nonprofit organizations for the purpose of developing:

8 (A) An allocation formula for the disbursement of moneys to CASA Volunteer Programs in this  
9 state; and

10 (B) Policies, procedures, standards and guidelines regarding the provision of court appointed  
11 special advocate services in this state.

12 (c) Apply for and receive funds from state, federal and private sources for CASA Volunteer  
13 Programs and the provision of court appointed special advocate services in this state.

14 (3) Public agencies or private nonprofit organizations to whom the commission has delegated  
15 responsibilities, or with whom the commission has contracted, under this section shall provide  
16 biannual reports to the commission regarding:

17 (a) The fulfillment of responsibilities that have been delegated or contracted for; and

18 (b) When applicable to responsibilities delegated or contracted for, the achievement of the ob-  
19 jectives in subsection (1)(c) to (f) of this section.

20 (4) The commission shall report annually to committees or interim committees of the Legislative  
21 Assembly related to the provision of court appointed special advocate services regarding the dis-  
22 bursement of moneys in the Court Appointed Special Advocate Fund established under ORS 458.584,  
23 the extent to which statewide outcome or performance measures identified under subsection (1)(d)  
24 of this section are being met and the current status of court appointed special advocate services  
25 provided in this state.

26 **SECTION 9. (1) The Judicial Department shall convene a continuous quality assurance**  
27 **advisory committee composed of individuals with expertise in the juvenile dependency and**  
28 **child welfare systems and other relevant stakeholders, including but not limited to repre-**  
29 **sentatives from the Department of Human Services, Department of Justice, office of public**  
30 **defense services, Indian tribes, Oregon District Attorneys Association and parents and**  
31 **youths. The advisory committee shall collect and report on quality assurance measures for**  
32 **efforts undertaken pursuant to sections 3 and 5 of this 2017 Act and engage in a basic quality**  
33 **improvement process in juvenile dependency proceedings and child welfare matters.**

34 **(2) The Judicial Department shall report annually to interim committees of the Legisla-**  
35 **tive Assembly that have authority over the subject areas of child welfare, juvenile depend-**  
36 **ency and the judiciary regarding the collection and reporting of quality assurance measures**  
37 **and efforts to ensure continuous quality improvement of legal representation in juvenile de-**  
38 **pendency proceedings and child welfare matters pursuant to this section and sections 3 and**  
39 **5 of this 2017 Act on or before September 15 of each year.**

40 **SECTION 10. This 2017 Act being necessary for the immediate preservation of the public**  
41 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**  
42 **on its passage.**

43