

# Senate Bill 525

Sponsored by Senators KRUSE, PROZANSKI; Representatives BARKER, OLSON (Presession filed.)

## 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, in consultation with Oregon District Attorneys Association, 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. Permits Department of Human Services to select counties where access must be provided by county office of the district attorney.

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, engage in basic quality improvement process in juvenile dependency proceedings and child welfare matters and develop performance standards for attorneys.

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**

**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 appointed special advocates or CASA Volunteer Program staff or volunteers; and

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **SECTION 3.** (1) The Department of Human Services and the Department of Justice, in  
31 consultation with the Oregon District Attorneys Association, shall:

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

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

44 (c) Collaborate to develop effective procedures for regular communication and contact  
45 between the Department of Human Services and the Department of Justice throughout the

1 life of a juvenile dependency proceeding or with regard to all child welfare matters.

2 (2) Notwithstanding subsection (1) of this section, the Department of Human Services  
3 may select one or more counties of this state where full access to legal representation, legal  
4 counsel, legal advice and litigation support must be provided by the county office of the dis-  
5 trict attorney for each selected county in one or more juvenile dependency proceedings. A  
6 county office of the district attorney selected by the department must agree and commit to  
7 provide full representation and assistance as described in this section for the duration of a  
8 juvenile dependency proceeding, and be subject to the requirements of the continuous quality  
9 assurance advisory committee for collecting and reporting on quality assurance measures for  
10 efforts undertaken pursuant to this section and performance standards developed by the  
11 advisory committee.

12 (3) The Department of Justice may charge the Department of Human Services pursuant  
13 to ORS 180.160 and 180.170 for services rendered and costs incurred to implement subsection  
14 (1) of this section. The charges made under this subsection may be a flat fee.

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

19 **SECTION 4.** The Department of Human Services, the Department of Justice and the  
20 Oregon District Attorneys Association shall coprepate and copresent to the interim com-  
21 mittees of the Legislative Assembly that have authority over the subject areas of child wel-  
22 fare, juvenile dependency and the judiciary a report regarding the provision of legal  
23 representation services to the Department of Human Services in juvenile dependency pro-  
24 ceedings and in child welfare matters in all counties of this state no later than September  
25 15, 2017. The report must include a plan for implementing the provisions of section 3 of this  
26 2017 Act that takes into account county-based need, readiness, regional impact and fiscal  
27 effect and has a timeline for implementation with full implementation occurring by January  
28 1, 2019.

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

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

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

39 (4)(a) The commission shall adopt policies, procedures, standards and guidelines for the  
40 program that include a workload model of contracting with caseload limits. The caseload  
41 limits may not exceed 80 cases per attorney at any one time. The office of public defense  
42 services established under ORS 151.216 shall employ managing attorneys to coordinate and  
43 oversee program management and evaluation, and ensure contract compliance.

44 (b) The policies, procedures, standards and guidelines adopted by the commission must  
45 ensure that, in complicated cases, attorneys who provide representation in juvenile depend-

1 **ency proceedings to persons entitled to and financially eligible for court-appointed counsel**  
 2 **at state expense have access to social service professionals to identify and resolve nonlegal**  
 3 **barriers to successful case resolution.**

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

9 **SECTION 6. The public defense services executive director appointed under ORS 151.216**  
 10 **shall prepare and submit to the interim committees of the Legislative Assembly that have**  
 11 **authority over the subject areas of child welfare, juvenile dependency and the judiciary a**  
 12 **report regarding the plan to implement the Parent-Child Representation Program statewide**  
 13 **as required under section 5 of this 2017 Act. The report must be made on or before Septem-**  
 14 **ber 15 of each year, beginning on September 15, 2017, and ending on September 15, 2021. The**  
 15 **report must include updates on implementation of the plan required under section 5 of this**  
 16 **2017 Act.**

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

18 151.216. (1) The Public Defense Services Commission shall:

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

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

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

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

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

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

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

35 (B) The appointment of counsel;

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

38 (D) Appointed counsel compensation disputes;

39 (E) Any other costs associated with the representation of a person by appointed counsel in the  
 40 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,  
 41 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,  
 42 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any  
 43 other provision of law that expressly provides for payment of such compensation, costs or expenses  
 44 by the commission;

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

1 (G) Performance for legal representation;

2 (H) The contracting of public defense services;

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

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

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

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

13 (i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services  
14 Account established by ORS 151.225 for the costs of personnel and other costs associated with lo-  
15 cation of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court  
16 Administrator.

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

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

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

29 (4) The commission may not:

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

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

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

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

35 458.581. (1) The Oregon Volunteers Commission for Voluntary Action and Service shall:

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

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

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

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

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

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

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

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

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

11 (2) The commission may:

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

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

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

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

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

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

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

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

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

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

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

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

39 **SECTION 9. (1) The Judicial Department shall convene a continuous quality assurance**  
 40 **advisory committee composed of individuals with expertise in the juvenile dependency and**  
 41 **child welfare systems and other relevant stakeholders, including but not limited to repre-**  
 42 **sentatives from the Department of Human Services, Department of Justice, office of public**  
 43 **defense services, Indian tribes, Oregon District Attorneys Association and parents and**  
 44 **youths.**

45 **(2) The advisory committee shall:**

1       (a) Collect and report on quality assurance measures for efforts undertaken pursuant to  
2 sections 3 and 5 of this 2017 Act;

3       (b) Engage in a basic quality improvement process in juvenile dependency proceedings  
4 and child welfare matters; and

5       (c) Develop performance standards for attorneys in juvenile dependency proceedings.

6       (2) The Judicial Department shall report annually to interim committees of the Legisla-  
7 tive Assembly that have authority over the subject areas of child welfare, juvenile depend-  
8 ency and the judiciary regarding the collection and reporting of quality assurance measures,  
9 efforts to ensure continuous quality improvement of legal representation in juvenile de-  
10 pendency proceedings and child welfare matters pursuant to this section and sections 3 and  
11 5 of this 2017 Act and performance standards for attorneys in juvenile dependency pro-  
12 ceedings on or before September 15 of each year.

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