FACT SHEET

Juvenile Dependency Representation

DHS Child Welfare

Background

By Oregon statute, whenever a state department appears in court, they are required to appear with legal representation. Additional by statute, the department is required to be represented by the Attorney General (AG) unless the AG has consented to alternative representation. Currently and historically, Child Welfare caseworkers appear in juvenile dependency proceedings without counsel in post jurisdictional, uncontested hearings. In contested hearings, Child Welfare will appear represented by an Assistant AG. If a hearing begins uncontested and becomes contested, the judge or caseworker will note the need for counsel and the proceeding is rescheduled to allow the department to appear with counsel. Pre-jurisdictionally, the state is represented by the District Attorney (DA), and the department is not represented except in those cases where the position of the department and the DA are not in alignment and in those counties where the DA has withdrawn from participating in juvenile dependency proceedings. Variations of this model exist around the state making the picture of representation for the department complex.

Over the past two decades, dependency proceedings have become increasingly complex. In the past, Child Welfare caseworkers would provide the court informal, verbal accounts of child maltreatment situations. As the complexity of the juvenile dependency proceedings increased, caseworkers have increasingly found themselves in a quasi-legal role in juvenile court proceedings. Depending on the court, caseworkers have been in a position where they prepare petitions and affidavits, draft court orders, and present the department's position in court. While practices have varied from county to county, universally, child welfare staff has performed multiple functions that are legal in nature.

In 1997, child welfare practice changed significantly with the Adoptions and Safe Families Act (ASFA) and the procedures in dependency court began to significantly change as well. In 1999, the Oregon legislature adopted statutes to implement ASFA. The legal process became more complex and caseworkers who lack legal representation can struggle with courtroom processes.

In the 1999-2001 biennium, DHS began engaging with legislators, Department of Justice (DOJ) and judicial partners around options to increase the availability of

legal counsel for the department in dependency proceedings. These conversations have continued and evolved through subsequent biennia and have produced several different budgetary proposals of varying size and scope. Ultimately, proposals which would provide full legal representation for the department in dependency proceedings each have failed to garner support from the legislature. In 2008, the Legislature did allocate additional dollars to help increase compensation for district attorneys. There was also an increase in the budget for the department to pay for additional DOJ representation and staffings.

In late 2013 several judges informed the department of their intent to require counsel for caseworkers in court under ORS 9.320, which presented an unplanned budgetary challenge for the state.

To allow time for a solution, the Legislature authorized temporary relief from ORS 9.320 through HB 4156, which sunset on July 1st, 2015.

For the 2015 Legislative session, DHS collaborated with DOJ and the Oregon Judicial Department (OJD) on a proposal that would have created a three year implementation plan for achieving representation for DHS in all juvenile dependency proceedings statewide. Utilizing a gradual approach of onboarding 12 counties per year, this plan was captured in Senate Bill (SB) 222 and would have required additional investments of $5.1m General Fund (GF) in 2015-2017 and $13.3m GF in 2017-2019.

SB 222 was supported by Senate Committees on Judiciary and Human Services and Early Childhood Education, but found difficulty in the Joint Ways and Means Subcommittee on Public Safety as a result of its significant cost. Indications from that committee pointed to a desire for further exploration of alternative approaches to improving the availability and quality of legal representation for all parties involved in dependency proceedings.

SB 222 was amended to create a statutorily defined task force on Childhood Dependency, and DHS was granted an extension of temporary relief from ORS 9.320 through June 2018.