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## **The Task Force on Legal Representation in Childhood Dependency Proposed Problem Statement and Scope**

State Capitol  
Salem, OR 97301

### **Problem Statement**

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, 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 (“DAs”), 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 State at termination of parental rights 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, CRB proceedings and permanency hearings), and \$2,581 for representation in termination of parental rights 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.<sup>1</sup> 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 (HB 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 HB 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.

### **Scope of the Task Force**

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.

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<sup>1</sup> 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.

- Create committees 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.