



OREGON PUBLIC DEFENSE

Office of Public Defense Services

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A MESSAGE FROM THE EXECUTIVE DIRECTOR

Nancy Cozine

Dear Public Defense Providers,

During our strategic planning process and through the 2016 customer satisfaction survey, we learned that you are interested in having more consistent communication from our office. So, in addition to intermittent emails, we are going to send three newsletters per year (March, July, and November) with information from the appellate division, contract services, financial services, as well as updates on budget, information technology, and other topics of interest.

Budget and Legislative Efforts

With Oregon's warmest and driest months finally here, I find myself focused on the wetter, colder months ahead, and the promise of yet another important legislative session. OPDS staff is working with the PDSC to define our need for increased funding, which will be submitted to the Legislature as "policy option package" (POP) requests. At its June meeting, the Commission considered five such packages: (1) expansion of the Parent Child Representation Program, (2) pay parity for trial-level public defense providers, (3) funding to supply public defense providers with a case management system, (4) pay parity for OPDS employees, and (5) additional positions at OPDS to provide support and quality assurance for trial-level providers. If you have questions about these, or want to comment, the PDSC will be discussing them again at its meeting on July 25, in Hood River.

In addition to building our budget request, we are working with others to educate the state Legislature on the importance of quality public defense. September's legislative days will include presentations on the Parent Child Representation Program, the defender's role in creating procedural justice, and holistic defense. If you are interested in helping with presentations to the Legislature, please let me know!

Conference Planning

Planning for the annual OCDLA Public Defense Management conference is underway. We will include information about the process of creating caseload standards in preparation for building our own Oregon-specific standards. There will also be an employment law update, and discussion about how consortia manage contracts to ensure they preserve their independent contractor status. If you have suggestions or questions, please send them to me (nancy.cozine@opds.state.or.us) or John Potter (jpotter@ocdla.org).

National Public Defense News

The American Bar Association sends a weekly newsletter to over a thousand public defenders and professors across the country, but according to their database, only three people in Oregon receive the email. The articles are interesting and provide a great snapshot of what is happening around the country. If you are interested in receiving the newsletter, send an email to Geoff Burkhart (geoffrey.burkhart@americanbar.org).

As always, I hope you have a chance to enjoy Oregon's summer months, and on behalf of the Public Defense Services Commission, I thank you for your continued work and dedication and welcome your feedback and suggestions.

Best regards,

Nancy

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CRIMINAL APPELLATE UPDATE

Ernest Lannet, Chief Criminal Defender

Along with sunshine, summer at the Criminal Appellate Section brings a season of Oregon Supreme Court brief writing, ultimately leading to a busy argument docket in the fall. The Court has agreed to review a wide array of issues of interest to criminal defense practitioners. Between September 19 and 23, 2016, the court will hear argument in seven Appellate Division cases:

Does the rebuttable presumption of vindictive sentencing apply when, after reversal and dismissal of the majority of the original convictions, a sentencing court makes the total punishment closer to what it previously imposed by increasing the sentence on a surviving conviction? *State v. Febuary*, 274 Or App 820 (2015), *rev allowed*, 358 Or 794 (2016).

Must a trial court consider a defendant's mental functioning, and the likelihood of effective treatment given that mental functioning, when deciding whether a substantial, mandatory-minimum prison term is disproportionate or constitutes cruel and unusual punishment? *State v. Ryan*, 275 Or App 22 (2015), *rev allowed*, ___ Or ___ (April 21, 2016).

Under ORS 137.106(1), which authorizes restitution when a crime has resulted in economic damages, what causal connection is required between the crime and damages? *State v. Gerhardt*, 273 Or App 592 (2015) (*en banc*), *rev allowed*, ___ Or ___ (May 18, 2016).

Would a psychologist's testimony concerning diagnoses of mental health issues be helpful to a jury when considering a defendant's contention that his admissions to touching the victim were a product of an adjustment disorder and misunderstood as confessions of abuse? *State v. Jesse*, 275 Or App 1 (2015), *rev allowed*, ___ Or ___ (May 5, 2016).

When the trial was conducted before the Supreme Court decision in *State v. Lawson/James*, 352 Or 724 (2012), which set out new standards for the admission of eyewitness testimony, was the Court of Appeals required to remand the case for a new hearing on the admissibility of the eyewitness testimony? *State v. Haugen*, 274 Or App 127 (2015), *rev allowed*, ___ Or ___ (May 18, 2016).

What procedure and standards must the trial court employ in

considering a defendant's request for self-representation made after trial has commenced? *State v. Hightower*, 275 Or App 287 (2015), *rev allowed*, ___ Or ___ (May 18, 2016).

May a defendant be found guilty of second-degree robbery by using force to commit theft while "aided by another person actually present" under ORS 164.405(1)(b), if the other person did not know that the defendant had committed, or was committing, a theft? *State v. Morgan*, 274 Or App 792 (2015), *rev allowed*, ___ Or ___ (May 18, 2016).

The Court will also hear argument in two cases argued by, respectively, office alumni Jed Peterson and Andy Simrin:

Can an officer who has lawfully seized an individual to investigate a crime ask for consent to search without unlawfully extending the duration of the stop? If not, how should the court apply the exclusionary rule to evidence found during a subsequent consent search? *State v. Pichardo*, 275 Or App 49 (2015), *rev allowed*, ___ Or ___ (April 21, 2016).

Is a post-conviction petitioner procedurally barred from raising an Eighth Amendment claim based on a newly announced substantive rule when the petitioner raised a different claim based on the same constitutional provision on direct appeal? May Oregon deny a constitutional claim based on a newly announced rule of substantive constitutional law that the United States Supreme Court applies retroactively? *Kinkel v. Persson*, 276 Or App 427, *rev allowed*, ___ Or ___ (May 5, 2016).

While we don't yet know what the Court will say on those issues, look out for our new Appellate Perspective Audio Conversations, in which our own Marc Brown has an extended discussion of a recent Oregon Court of Appeals or Oregon Supreme Court opinion with the attorney who argued the case. You can find them on OCDLA's Library of Defense for streaming or download.





OREGON PUBLIC DEFENSE

FINANCIAL SERVICES

Angelique Bowers, Budget & Finance Manager

I really appreciated everyone's patience during my team's transition this last year. We have a great team that is working hard to process your payments in a timely manner.

We will have another change on our team. Sarah Stahlecker will be leaving OPDS to continue her education. She will be missed, but we wish her well in her new adventure.

I would also like to announce Shawna Crowther's promotion to the Accounting Tech 2 position. Please join me in congratulating Shawna. Currently, we are in the process of recruiting for our Accounting Tech 1 position. That recruitment closes July 6th.

As soon as we have our new team member, I will send out an email to all providers with your AP Reps contact infor-

mation. Our goal is to minimize any delay in payment processing during this transition. For now, continue to contact your current AP Rep if you have any questions or concerns about your payments.

I use email to communicate to public defense providers about changes on our team, updates to the guideline rates and payment policy. If you have not been receiving these emails, please email me at

angelique.l.bowers@opds.state.or.us

and ask to be added to the all provider email list.

COMING SOON : We are in the process of updating our guideline rates in the Public Defense Payment Policy and Procedures. The next step in this process will be to update the payment policy.

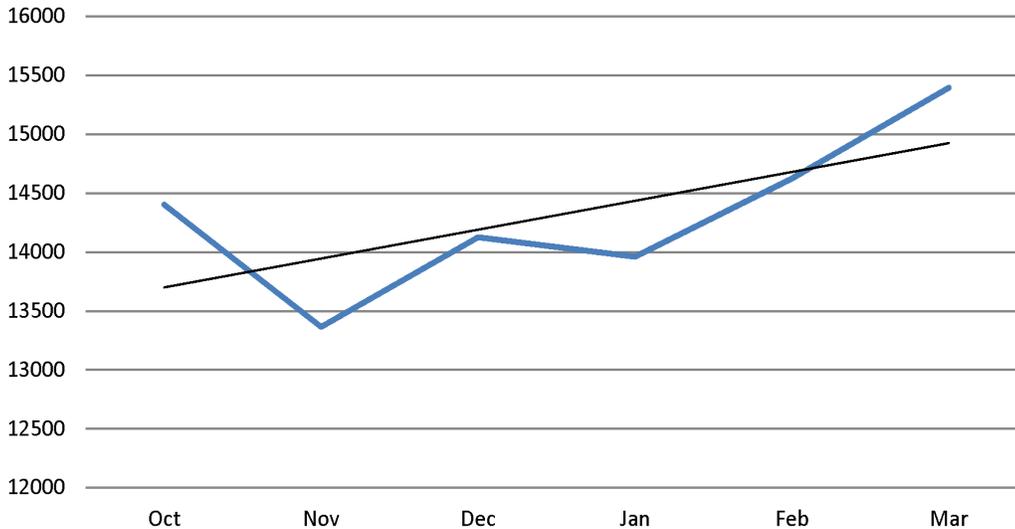
CASELOADS INCREASING STATEWIDE

Caroline Meyer, Contracts Manager

For the first time in several biennia, OPDS is projecting an increase in the statewide caseload. With local economies recovering, counties are hiring additional deputy district attorneys resulting in more criminal charges being filed and an increase in court-appointed cases. A similar increase can be seen in juvenile caseload with the restructuring of DHS priorities and a

heightened focus on child safety. OPDS will continue to monitor caseloads closely and encourages contractors to contact their contract analyst about changes in their local communities that may affect caseloads. Additionally, OPDS relies heavily on timely and accurate caseload reports from contractors as this is the best indicator of current caseloads.

**Statewide Non-Capital Caseload Credits for
October 2015 through March 2016**





OREGON PUBLIC DEFENSE

CASE MANAGEMENT SYSTEM

Cecily Warren, Research/IT Director

The Office of Public Defense Services continues to work on development of a new case management system, and many have asked when a configuration will be available for contract providers. The short answer is that we have secured a contract for a few pilot projects (juvenile trial and appellate), but are still negotiating a statewide contract that would allow contractors to purchase eDefender licenses at a reduced rate. At this point, a few noteworthy requirements for purchasing under the anticipated contract are:

- it must be a single statewide, cloud-based, configuration through eDefender;
- office customization will be limited to templates and reports; and

- OPDS will manage initial questions and issues, and will be responsible for requesting changes to the configuration.

Some other questions and answers:

I need to renew my licenses for another year. Should I do it?

At this time, we don't have a firm timeline to complete a configuration, and it will likely be at least a year before it is completed. If you are currently using a case management system, it would be prudent for you to renew.

Can I negotiate directly with Journals Technologies?

Contract providers may purchase eDefender licenses without using the statewide contract, but will not then be able to take advantage of the

statewide price agreement or contract stipend, and may end up with a configuration that doesn't have reports that OPDS will require. Additionally, the more users there are using the statewide configuration, the better the price will be for everyone. If you cannot wait for the statewide agreement, we can provide you with eDefender sales contact information.

I realize how highly anticipated this is, and we are continuing to move as quickly as possible. If you have any questions, please let me know.

Cecily Warren

Research/IT Director

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CHANGE, FYADWYAD YAGWYAG

Cynthia Gregory, Human Resources

Change, whether in the workplace or our personal lives, comes about for a variety of reasons. Managing that change requires the delivery of value to the greatest degree possible as soon as possible. How do we do that?

Define the change. Ensure that changes are pursued for the right reasons from start to finish and that they are the right sorts of change. Design the change for the future, not the present. Create prioritized, actionable, and realistic goals for the process of change.

Implement the change. Solicit help from individuals who have the expertise and capability to help guide the change. Balance the pressure to meet deadlines with the commitment to ensure the change will accomplish its objectives.

Sustain the change. Track the impact of the change and the engagement of the stakeholders. Find reasons to tell the story of why change occurred. Be on the lookout for evidence that

the change does not fit. Keep working to change routines.

Ultimately, good change management allows you to move beyond If You Always Do What You Always Did You Always Get What You Always Got.





OREGON PUBLIC DEFENSE

TRIAL & APPELLATE ATTORNEY COLLABORATION

Shannon Storey, Chief Juvenile Defender

Working collaboratively with parent-defense appellate counsel to achieve the best results for your parent client:

In most circumstances, an appeal is undertaken only after trial level litigation is complete. But juvenile dependency cases involve multiple discrete hearings most of which give rise to separately appealable judgments. And the filing of a notice of appeal does not divest the juvenile court of jurisdiction to hold subsequent hearings while the appeal from an earlier hearing is pending. Consequently, when a dependency judgment of the juvenile court is on appeal, the parent-defense appellate attorney prosecutes the appeal in the appellate court at the same time that the parent's trial attorney defends against

the department (DHS) and—more often than not—the child's attorney in the juvenile court. The concurrent representation and simultaneous litigation is unique to juvenile dependency practice and, to be most effective, requires thoughtful and timely collaboration.

Best practices for collaboration with parent-defense appellate counsel during periods of concurrent representation include the following:

- After referring a judgment for appeal, call appellate counsel to discuss potential issues for appeal, strategies for the ongoing litigation, and whether you should ask the juvenile court to stay the judgment pending appeal.
- Promptly return all exhibits to the juvenile court. Appellate counsel cannot litigate the appeal unless and

until the record on appeal is complete.

- After you receive the opening brief, call appellate counsel to discuss the merits of the appeal, strategies for the ongoing litigation, and whether you should ask the juvenile court to stay the judgment pending appeal.
- While the appeal is pending, consult with appellate counsel before advising the client as to relinquishment or any other offers of settlement.
- While the appeal is pending, consult with appellate counsel in advance of any hearings and promptly inform appellate counsel when the juvenile court enters a new judgment.
- After the Court of Appeals has rendered a decision, consult with appellate counsel about the disposition on appeal, the next steps in the juvenile court, and whether to seek additional relief in the appellate courts.

“The concurrent representation and simultaneous litigation is unique to juvenile dependency practice...”

SEEKING NON-ROUTINE EXPENSES FROM OPDS

Paul Levy, General Counsel

Considering asking for an expert in a public defense case? Or has a request been denied and you want to seek reconsideration or appeal the denial? Or do you want to know what OPDS looks for in a well-supported NRE request? Get the answers to these and other NRE questions in *Requesting Nonroutine Expenses from the Office of Public Defense Services: The Easy Way and the Other Way*, by Paul Levy, OPDS General Counsel, [here](#) on the OPDS website.



OREGON PUBLIC DEFENSE

PUBLIC DEFENSE SERVICES COMMISSION

PDSC

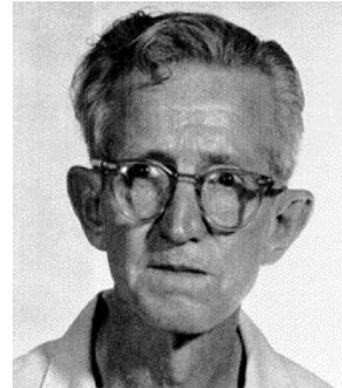
The Public Defense Services Commission (PDSC) is an independent body that governs the Office of Public Defense Services (OPDS). The Chief Justice of the Oregon Supreme Court appoints the seven Commission members.

The Commission's primary charge is to establish 'a public defense system that ensures the provision of public defense services in the most cost efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.' The PDSC appoints the Execu-

tive Director of OPDS. OPDS is comprised of the following divisions: the Appellate Division, Contract Services, Financial Services, General Counsel's Office, Human Resources and Research and IT services.

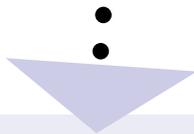
There are approximately eight PDSC meetings held every year which are open to the public. The materials for each meeting are posted on the OPDS and OCDLA websites. The dates, times and locations for each meeting are also posted on these websites. OPDS encourages members from the

public and from the public defense community to take part in these meetings. All input is welcome and valued.



Gideon V. Wainwright
372 U.S. 335

WWW.OREGON.GOV/OPDS



UPCOMING PDSC MEETINGS

- **July 25&26: Best Western Mt. Hood**
- **September 22: OPDS Salem**
- **October 28: Sunriver Resort**
- **December 15: Clackamas County**

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