

Members

Per A. Ramfjord, Chair
 Hon. Elizabeth Welch, Vice-Chair
 Mark Hardin
 Paul Solomon
 Lisa Ludwig
 Kristen Bell
 Thomas M. Christ

**Ex-Officio Member**

Chief Justice Martha Walters

Executive Director

Lane Borg

PUBLIC DEFENSE SERVICES COMMISSION

Thursday May 21, 2020
 10:00am – approx. 12:30pm
 Via Microsoft Teams Live Event

MEETING AGENDA

1.	Action Item: Approval of Meeting Transcript – PDSC meeting held on April 16, 2020. (<i>Attachment 1</i>)	Chair Ramfjord
2.	Legislative Update	K. McCullough
3.	PCRP Update	K. Farkas
4.	Contracts Update	H. Pate & E. Deitrick
*	<i>Five-minute break scheduled for approximately 11:00am PST</i>	All
5.	Agency Efforts in Response to Ramos Decision (<i>Attachment 2</i>)	E. Deitrick & E. Lannet
6.	Action Item: Approval of Investigator Rate Increase (<i>Attachment 3</i>)	E. Deitrick
7.	OPDS Staff Update	L. Borg & S. Storey
8.	Public Comment	All
9.	Executive Session* – PDSC Review of Multnomah County PCRP Contract Proposals	PDSC & OPDS

In compliance with the Governor's Executive Order No. 20-12 issued on March 27, 2020, this meeting will occur via Microsoft Teams Live Event videoconference and will be available for both live-stream and archived viewing at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MTU4MGZkY2QtOTNkZi00ZTQ1LTgwMGQyTVhNjUzOWRkZTVi%40thread.v2/0?context=%7b%22Tid%22%3a%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2c%22Oid%22%3a%223d7cf095-922e-45b6-ba97-3e8edd1f03db%22%2c%22IsBroadcastMeeting%22%3atrue%7d

**The Executive Session will be held at approximately 12:30pm PST. Pursuant to ORS 192.660(2)(f), the Commission will review PCRP contract proposals to provide public defense legal services beginning on July 1, 2020. The Executive Session will be held via a separate Microsoft Teams meeting.*

Please make requests for an interpreter for the hearing impaired, or other accommodation for persons with disabilities, at least 48 hours before the meeting to Kaysea Dahlstrom at (503) 378-3349.

Next meeting: Thursday, June 11, 2020 10am-2pm. Details to be announced at a later date.

Meeting dates, times, and locations are subject to change; future meetings dates are posted at:
<https://www.oregon.gov/opds/commission/Pages/meetings.aspx>

Attachment 1

Chair Ramfjord: Welcome, everyone, to the April 16th, 2020, Public Defense Services Commission meeting. This is our first virtual meeting. I hope that everybody is doing as well as can be expected during these strange times. This meeting will be a little different in a number of respects and I want to go over those. Everybody's been working very hard at OPDS to make sure that this meeting functions as well as it can but I'm sure there will be some glitches, there always are with things like this and I hope that you will be patient with those.

I do want to mention a few things about the format at the beginning. First of all, if you have any questions that you want to ask or put, please use the Q&A function which is on the live stream. Alternatively, you can email Kimberly McCullough at Kimberly.L.McCullough@opds.state.or.us with questions and she'll try to get those to us. Also for my fellow commissioners, if you have a concern or a comment that you want to make and you're trying to get my attention, there is a chat function, you can use that, I will try to keep my eye on that so that we make sure that you have a chance to comment on that. Finally, I just want to mention to everybody that there's a little bit of a time delay between the live stream that we're engaged in here and what people are hearing on the other end. So at times, I may pause for a moment just to make sure that there are no questions or that there's an opportunity for people to raise any issues. So if it seems like there's a gap here and there, that is the reason why.

I want to start today by welcoming back one former commissioner, Tom Christ, who has rejoined, and welcoming one new commissioner, Paul Solomon, who's just joined. I think all of you are quite familiar with Tom, who served on the commission for quite some time. He was off for a matter of a few months and has happily come back to join us. Paul De Muniz... Excuse me, Mike De Muniz — confusing the former Chief Justice and his son is something. In any event, Mike De Muniz has rotated off the commission at this point in time so Tom is coming back on. And then Paul Solomon is joining and I'll let Paul just say a few words about himself by way of background before we get started here.

Paul Solomon: Great, thank you Per. It's a real honor to serve on the commission and I appreciate this opportunity. I am the Executive Director of Sponsors, a re-entry program in Lane County where I've worked for the last 18 years. Over the past 20+ years, I've been involved in a range of activities related to criminal justice reform. I serve on many boards and committees throughout the state including Lane County's Public Safety Coordinating Council which I chair, the Governor's Re-Entry Council, I just stepped down from the board of the Public Defense Services of Lane County, and I'm really looking forward to this opportunity to participate, so thank you.

Chair Ramfjord: Well, we're very much looking forward to having you and are very happy that Tom is back here to serve as well. There's also been some significant staffing changes since our last meeting and before we really start with going through the minutes of the last meeting, I would appreciate it if Lane would take a moment

to introduce some of the new staff people who have joined us since we last met. Lane, are you able to come live now, or you want to wait on that?

Lane Borg: Nope, that was my technical glitch, I did not unmute. I wasn't paying attention, sorry. Thank you, Paul, for coming on, I really appreciate your being willing to serve and am excited to work with you again in criminal justice reform. For those of you that don't know it, I just want to shout out. The Sponsors Program in Eugene is, I think, the national standard for re-entry and if you aren't aware of it, please familiarize yourself with it, it's just a great program. The people that I do want to introduce in terms of new staff at the office is first, Julie Fetsch, she comes to us from long experience within State agencies including working at the Oregon Health Authority and working on projects at the Capitol, so she's got familiarity with the Legislative Fiscal Office, and as I said, a lot of experience with the State. I am going to ask her to say...so you see her, ask her to say a few words, and then I'll introduce the other person.

Julie Fetsch: All right, I unmuted, did I come through?

Chair Ramfjord: You did.

Julie Fetsch: My name's Julie Fetsch and I'm the new Budget and Finance Manager at OPDS. I'm basically responsible for three areas of the agency — budget, accounting, and accounts payable. I've been with the agency for two months now. One of those months was pre-COVID and the second month is post-COVID so it's been a bit of a challenge. But I've just been really impressed with how this agency has dealt with the issue. I'm really proud to be part of this team and I'll say it's nice to virtually meet all of you but I'll really look forward to meeting you in person soon.

Lane Borg: Great. Thank you, Julie. And the other person who you've actually had quite a bit of contact with already is Kaysea and she's going to be the glue for the commission, the main contact people for everybody in this virtual world. She's the virtual office so with that, Kaysea, I want you to just introduce yourself and give a little bit of background for folks.

Kaysea Dahlstrom: There we go, all right. Good morning, everyone. My name is Kaysea Dahlstrom and I am the Executive Assistant here at OPDS. I transitioned to this new role from the OPDS Appellate Division so I'm not quite that new to OPDS but I'm really happy to be here in a new form. I would also like to take a minute to thank you all — commissioners, presenters, and attendees — for being so flexible and understanding as we transition to these virtual commission meetings. We recognize that these times are completely unprecedented and challenging and we are doing our best to navigate them. If you have feedback, though, we would really appreciate you sharing it. You can reach me at my email address which is posted on the front page of our website as well as on our COVID-19 Updates webpage. I have also placed it in the Q&A of this live stream. So thanks again and back to Lane to wrap this up.

Lane Borg: Thank you. And just with Kaysea, she's also been a person who's been the main person to curate our weekly calls and I'll talk just briefly about that in my COVID Update Report. But she is the person to contact if you have not already been linked in to the weekly agency calls. She's the person who makes sure that gets up and running for me. Thanks. I'll send it back to Per.

Chair Ramfjord: All right, thank you, Lane. We'll start today with just the one action item that we have which is approving the minutes from the last meeting on January 23rd of this year. Do I have a motion to approve the minutes?

Lisa Ludwig: I so move to approve the minutes.

Chair Ramfjord: Is there a second?

Mark Hardin: Second.

Chair Ramfjord: Any discussion? Hearing none, all in favor?

All: Aye.

Chair Ramfjord: I think we have a majority so the motion passes. Thank you. All right. Why don't we go then to the next item on the agenda which is the COVID-19 Update, the agency plan report from Lane.

Lane Borg: Great, thank you. First of all, we did make some significant — as I think most workplaces and agencies have — we made some significant adjustments and alterations where we have a minimal crew working at the Commercial Street office as well as the State Street office. Essentially, it is the Appellate Division support staff that have to come in. Without getting into extreme detail on it, that's primarily because our primary source of communication with clients is letters. So we have to physically get letters out and we actually do deal with confidential communication artifacts, parts of the record, exhibits, and those come in and so it's a matter of processing those. But the appellate staff attorneys are primarily working from home, not exclusively, we do have a supervisor in each day, but they're able to work from home and do that.

We also, in the Contract Services Division have our Accounts Payable staff, Julie's crew, in there working every day and we have made some significant adjustments I'll address in a second in terms of trying to make sure bills get processed. But that is the Central Services crew. And by having other people move out of both buildings, the attorneys and the staff that can in Contract Services, we are down to just a half a dozen or so in the AD building. If you're not familiar with it, it's a two-story building, people are very spread out there. And then in the Contract Services, we have about eight people each day that are working there. And again, everybody's pretty well spread out and not interacting so we can maintain it. We are confident that we are in compliance with both the Chief Justice's order and the Governor's order regarding central agency operation guidelines. And we have worked with AFSCME in Appellate

Division in working out an agreement so that they were, as we rolled this out, they understood what the plan was and how that was going to go and we've been communication with them as we've worked through this.

We also appreciate the Chief Justices, I guess I'll refer to it as sort of the organic order that she's been willing to take a look at and get input on and I think that's been very important. And so different aspects of our agency have participated in that for juvenile representation and criminal representation and so we really appreciate her and her staff reaching out for input on that. In terms of the PSA, the account that all of you get paid from, we have seen a slowdown in NREs — although there's a little uptick I'll tell you about in a second — but a slowdown in that. But we're still trying to make sure we process those and get that work done in a timely manner. There's a slowdown, obviously, in court hearings but I have not yet heard that there are wide types of cases that aren't going to be fought.

I think we're back, in some ways for those of you who are old enough to remember, the BRAC years where the work is being delayed rather than it not being there. And every bit of work that our providers do when representing clients takes more time and has an additional layer of difficulty to it. So I have made it clear and I have sent out that I do not expect any providers to be laying anybody off, I'm not cutting contracts. I have said and signaled in our meetings, weekly meetings, that if I hear people are laying people off, that's when I would take action. I've not been given a direction from the State to cut budgets at this point and so we're not in that environment and I think it's very important to keep whoever we can employed.

We exist in all 36 counties. And as I said before, there's still plenty of advocacy and work to be doing for clients. We have, to that end, and I give Keren Farkas credit for this, she reached out and asked and we are making case managers that are not in PCRCP counties available to juvenile dependency representation folks in non-PCRCP counties to consult with them very quickly, to get on the website and get a quick NRE approval to do a consultation about options and strategies during this environment for dependency representation. That, we are especially tracking because another aspect that we've been asked for from both the Governor's Office and from LFO is to track any expenditures related to COVID that the State may ultimately be able to seek recovery from from the federal assistance legislation and from FEMA. So we will be tracking that.

We're doing a weekly phone call with the agencies, doing that on Tuesday mornings, with providers and basically whoever's interested in calling in and trying to provide updates, information about what we're hearing, and also to get a dialogue going about... I'm hoping that next week we have, for instance, a dialogue about remote appearances and what peoples' experiences are. Because I don't think this is something that's going to go away quickly, and I think that frankly, we should be prepared to have some level of meaningful appearance and advocacy even if we are in a different event, shut down if this wave comes back or we go through this, so I've been trying to get input from

providers about how remote appearances are going. And from my perspective, I'm looking at is there equipment we need to be buying to help people either make appearances, connect with the court, connect with hearings, or connect with clients, say, in the dependency and visitation. So that's something that we're working on and we do that every day.

Specifically, on NREs, I wanted to report. I know that there's probably a lot of interest in the people who are watching, participating, or observing. One of the things that we've done, as I said, they're in. We have made some adjustments so that we have a person. It's a multistep process as you know, that it's not just a matter of a bill showing up and we write a check and send it out. There's a review, there's a process that we have to go through, and we are audited every year for our practices. So, I don't think this is the time to abandon reasonable accounting practices, but we are trying to prioritize things as much as we can. We're prioritizing individuals over institutions. So, if this is a reimbursement to a hospital or a corporation, different records that way, those are not on the front burner. We are trying to get providers that we know do good work for us and are dependent upon that money to try to get those in as quickly as possible.

Julie has established a mechanism to kind of quickly screen those so that there are not any problems with it that we have to send back and get adjustments to billings. Those can go one way and the ones that are processed correctly, or submitted correctly, we can get processed as quickly as possible. I know there's been a lot of frustration and discussion around this, I will say. I can't have the AP staff — one of the suggestions was, "Well, can't you just put the right number in?" or, "Just correct it," because I know people cut and paste and submit things — I can't do that because in a control mechanism, that would be a huge vulnerability to us if I allowed the people who can authorize payment out of the agency to also be able to make changes to the document that authorizes that. That would be seen as a huge vulnerability to us. So as frustrating as it is, if the submissions aren't correct, if they're not tied to that, we do need to send them back.

One of the things we've done, and I think this has been successful is — that was Lake Oswego School District walking behind me — is that we are encouraging attorneys, for investigators, to request batches of authorizations so that they aren't just...because we do have a procedure that says that you can only submit one request for payment per authorization, but you can get multiple authorizations. Say, an investigation that we might authorize 50 or 60 hours or 100 hours on, you can get those in 10- or 20-hour batches and then the investigator can send those in as soon as that amount of work is done and submit those. It's going to stress Julie's group because that is obviously increasing the number of requests that come through, but I think it's important, it's something we can do. We've been doing it for a while in the bigger cases, the death penalty cases, etc., Jessica's Laws, and so this is just extending and encouraging that practice to all cases that it's relevant to. So, unless there are other questions, that was the end of my report. I see that there may be a question here. Let's see if I can see it.

Chair Ramfjord: Mark, did you have a question? I see that you are off mute there.

Mark Hardin: No, no question.

Chair Ramfjord: Any other commissioners have any questions? Or anybody else have any questions? All right. Well, then we'll move on to the next topic on the agenda which I'm sure everybody is interested to hear more about which is the Legislative Update from Kimberly McCullough. Obviously, things have taken an unexpected turn with this, with the whole COVID-19 crisis, and so we'll hear a little bit from her about where things stand. Kimberly, you ready?

Kimberly McCullough: I sure am. Am I live now? Can you hear me? I'm here, you can hear me now. Oh, no, it just went on my feet. Why did my camera just change angles? I'm sorry, folks. It was showing me and then all of a sudden, it changed directions. That is very embarrassing. Okay, there, I'm back. Sorry about that, folks. I know, just kind of funny. So, commissioners, Chief Justice, my name is Kimberly McCullough, I'm the Legislative Director here at OPDS. It's nice to see you all virtually. A lot has happened since my first appearance at the commission meeting in January. Much of that was memorialized in an update that we sent to you in March when COVID-19 became such a issue that we had to actually delay our commission meeting.

For folks that are interested, on the OPDS home page under Latest News, there's a post that is dated 3/17/20 and it's titled Important Updates as of March 17th, 2020. In that document, you'll find a Legislative Update from me describing what happened in the short 2020 Legislative Session. I'm going to review what's in that update a little bit and then bring you up to speed. So, in the 2020 Legislative Session, it ended on March 5th of 2020 and there were over 50 bills that had been introduced during the session that had an impact on our work of criminal, juvenile, and dependency law. However, due to there was the Republican walkout and then an impasse in negotiations between the parties, none of those bills, none of those 50 bills that impacted our work, made it across the finish line. Twenty-four of those bills had completed the committee process and all they needed was a floor vote to pass. Under those circumstances, if they've made it out of committee, that 99.9% of the time means that they're going to be headed to the Governor's desk, so all 24 of those bills didn't make it.

Several bills were of particular importance to our agency and our commission. House Bill 4004 related to Public Defense Reform, that was a bill that was the product of a group of stakeholders in the public defense system including the Oregon Criminal Defense Lawyers Association, Oregon Defense Consortia Association asked me... OPDS was invited to help with the drafting of that bill. We appreciated the direction that it was going to give to the PDSC and our agency to continue to move us toward a better model of public defense. We testified in support of the bill. It was teed up to make it across the finish line but because of the way the session ended, that bill did not pass. There was another

bill, House Bill 4040, where we were fairly engaged. It would have expanded Family Treatment Court and the Parent-Child Representation Program. It originally was fairly broad and then it had been narrowed down to specifically focus on Clackamas and Douglas counties. We worked with the bill's chief sponsor, Alissa Keny-Guyer, and with the Oregon Judicial Department very closely to educate legislators about the benefits of expanding the PCRCP and the bill was very well-received by legislators. They weren't willing to fund the entire package as it was originally five counties, but they were going to pare it down to two and pass it. It was all ready to go and did not pass because of the way session ended.

The other bill that was very important to us was House Bill 5204, the budget bill. As they often call it, the Christmas tree bill, the bill that has all sorts of items for different agencies and budget allocations. In that bill, they would have allocated the \$20 million special purpose appropriation that had been authorized by House Bill 5050 in the 2019 Legislative Session. We were working very hard during session with the Legislative and Fiscal Office and members of the Ways and Means Committee, legislative leadership and our stakeholders, to get that \$20 million approved to be allocated and it was budgeted in that budget bill. We presented to the Ways and Means Public Safety Subcommittee on February 18th to support that, but again, because of the way session ended, that budget bill did not pass, and the SPA was not allocated. So, the SPA is still set aside in a separate account right now.

And the Emergency Board, or the E-Board as people call it, [Distortion 00:25:22] we have been advocating for the release of the SPA. And it appears that the E-Board is going to meet sometime in May although an official date has not yet been set. The E-Board usually meets during legislative days, legislative days have been canceled this year because of COVID, and my understanding is that the E-Board's not going to meet until sometime after the revenue forecast. That happens on May 20th. At this point, I think it's just [Distortion 00:26:05] on the budget situation right now. As you know, COVID-19 has been incredibly disruptive to our state's economy. That's really going to have long-lasting effects on the State budget, and I just think we all need to be cognizant of that fact going forward. We're heading into very difficult times so while we're advocating and I'm advocating as the Legislative Director of OPDS for the E-Board to release the SPA or at least some portion of it, the E-Board has very difficult decisions to make right now and my sense is that the folks in our government who are holding the purse strings are going to be very cautious and very measured in any decisions to send money, regardless of whether they're in the general fund or set aside in special accounts.

So, although we're continuing to advocate for funding to address the serious issues in our public defense system, this crisis is likely to have an impact on our efforts. And so, I just think we all need to just keep that in mind as we move forward. Another thing we're anticipating is numerous special sessions to address the COVID-19 crisis. It had appeared that a special session was going to happen a couple of weeks ago but that has now been delayed. We don't

anticipate it happening for a while now. My understanding is that the delay is at least in part due to uncertainty about how much of the federal government relief package is going to be coming to Oregon. And so just a desire to wait until there is some more clarity about that before they pull the legislature together. When those sessions do happen, there's likely to be several issues that relate to public defense that are included in their legislative proposals. One relates to judicial power to delay case deadlines. Another relates to law enforcement discretion to not arrest certain individuals with arrest warrants. Right now, there are a number of stakeholder conversations happening on those and other issues, and we've been staying plugged into those conversations as much as possible.

The last thing I want to cover is public defense reform more generally. During session, we were very excited that the Governor was really taking a very keen interest in public defense reform. And she took the first steps in convening a Public Defense Transformation Committee to discuss structural change to our public defense system. Unfortunately, because of COVID-19, that work has gone on hold for the time being. Our hope is that we'll get to a place where we can re-engage with that work soon, but things are a bit uncertain. The plan for the committee really was to make recommendations for legislation for the 2021 session. The committee, as it was being put together, included a broad cross-section of stakeholders and at least one member of the PDSC and the goal was to do listening sessions around the state and seek input from public defense providers and system stakeholders.

But again, all of that is very much in the air at the moment, and if I could read the tea leaves, I would say that when that work reconvenes in whatever form it does and when it does, again, the difficulties of the budget are likely to have an impact on those conversations and what happens. I think that if we're looking at structural changes, the things that we can do that have a positive fiscal impact or have no fiscal impact are probably more likely to come to the forefront than things with a big price tag. So yeah, COVID-19 has really, really changed the dynamic and coming off of a pretty intense short session with very few bills in general that passed, it's been a wild ride. But we're just going to keep plugging away and do the best we can. So that's my update.

Chair Ramfjord: Okay. So fair to say that we're looking to sometime later in May before we have a better sense of what may or may not happen with the SPA?

Kimberly McCullough: That's correct.

Chair Ramfjord: Okay. All right. Well, thank you very much. Any questions from other commission members for Kimberly? Okay, hearing none, we'll move on to the Case Manager RFP Update. And Keren, I think was going to lead that. Make sure you unmute your phone when you start to talk. We're having a little bit of technical issues, I can see from the chat on the side, so just be patient.

Keren Farkas: Okay, can you hear me?

Chair Ramfjord: We can, thank you.

Keren Farkas: Okay. I apologize, I'm not technologically savvy. I've learned that over and over again since this crisis began but I'll get started. Thank you...

Lane Borg: Keren, you're not live yet.

Keren Farkas: I'm not live yet, okay, well I...

Lane Borg: Yeah, you'll see it appear live.

Keren Farkas: Okay.

Mark Hardin: I can see Keren and hear her.

Lane Borg: Yeah, we can, but it's the box that has live. Like right now, Per is the one that everybody else is seeing. The audience people.

Mark Hardin: Got it.

Lane Borg: So, we're just waiting for Kaysea to get her switched over.

Chair Ramfjord: Yeah, folks, we're continuing to work on this. It'll be just a minute more here.

Keren Farkas: Okay. I think I'm just going to talk for now. Shall I get started?

Chair Ramfjord: Yeah, go ahead and get started.

Keren Farkas: Okay. Again, apologize for the technical difficulties. I wanted to talk about the Case Manager RFP. Dana Brandon is also going to be presenting, our Case Manager Administrator, but before turning to her, I just wanted to offer a brief summary of OPDS's efforts to integrate case manager support into public defense practice. We know that case manager support is a critical piece of providing effective interdisciplinary representation and is an evidence-based factor in improving outcomes for involved families. So we want to make sure it's accessible so there are a couple different features about this round of the Case Manager RFP. First, we are rolling out PRCP in Multnomah County, we issued that RFP a couple months ago. We're currently reviewing responses and part of that RFP actually allowed attorney providers to propose in-house case managers. So, we are considering allowing attorney providers to our institutional representors to have case managers on staff. We received a couple of those proposals and are currently reviewing them.

We also sent out an RFP for independent case managers to respond to work independently and work as a pool of independent case managers for our PCRCP attorneys. That is the current structure of how case managers work in the five counties where PCRCP is active. Additionally, we wanted to make efforts to roll

out case managers to non-PCRCP counties in this period before we're able to go statewide. So, to do that, we also put out an RFP for case managers in Washington and Clackamas County, where they would not be on contract the way that our case managers are in PCRCP counties. But instead, we'll go through a pre-screening process and enter into agreements with OPDS to take on cases as they are assigned. So equivalent to the attorney agreements that we're also entertaining for the larger RFP for hourly assignments. Lastly, in the same vein of efforts that connect our contract attorneys with case manager support, as Lane already mentioned, we have sent an announcement to our providers that they can work with case managers for technical assistance for one- to five-hour consultations to navigate the many impacts COVID-19 is having on juvenile practice and affected families.

With that, I will turn to Dana Brandon, our Case Manager Administrator, who has been with PCRCP since its inception and is responsible for the high quality of practice that exists among our PCRCP case managers.

Dana Brandon: Thank you. Can you hear me?

Keren Farkas: Yes.

Dana Brandon: Great. Good morning, thank you for the opportunity to speak on behalf of the work [Distortion 00:36:45].

Kimberly McCullough: I don't think she's live yet.

Dana Brandon: Oh. Can you hear me?

Keren Farkas: Yeah, I can hear you.

Chair Ramfjord: Yes.

Dana Brandon: Okay. Should I continue?

Male speaker: Go ahead, Dana.

Dana Brandon: Okay.

Kimberly McCullough: Yeah, you're live.

Dana Brandon: Okay, sorry. Perfect. Thank you so much for the opportunity to speak on behalf of the work that our case managers are doing to support public defense clients and reaching better outcomes and addressing all the issues that have impacted them as we've gone through this pandemic. Like Keren mentioned, I've been with PCRCP since its inception and I'm honored to report on the work that our group is doing. I also want to convey my appreciation to OPDS for bringing Keren onboard to our team. She's done a fantastic job getting to know our

providers, to understand the unique regional issues, and providing guidance to those attorneys and addressing them.

As Keren mentioned, case manager...an essential component of this model and they provide a unique perspective to the defense team in a variety of roles. They're available in times of crisis to problem solve and I think that during this COVID pandemic, I've been really impressed with their ability to be creative in their advocacy efforts. Their ability to resource and communicate client perspective in collaboration with attorneys has been invaluable. To summarize some of our more recent work, we have identified leads in each of our PCRCP counties. The lead case managers have organized local groups to create resource pages to share with the attorneys. These pages provide updates to service impacts due to COVID-19. Online resources that support recovery and mental health, for example. They've identified agencies that support our clients in meeting their basic needs, and resources for both technology and virtual visitation support.

As an example, in Coos County, the lead case manager has been surveying providers to keep the group apprised of any service impacts and just this week, their alcohol and drug treatment providers announced they're doing their very first new client assessments by video calls. And as soon as this information came out, the case manager was able to communicate to the attorney group, then the clients with those needs could access this resource. The attorneys have been really appreciative of receiving these impacts to services and available resources to their clients during the pandemic. Our case managers have also been paying close attention to the impacts to visitation between parents and children. As parents have been cut off from in-person visitation, our case managers have been reaching out to clients to inquire about what their contact looks like and to advocate for continued contact with their children. Some case managers have worked with clients that didn't have access to a phone or computer to do virtual visitation and were able to identify an available device, advocate with DHS who then funded and purchased a tablet so that the parent and child could have successful virtual visitation.

We have other examples of case managers supporting clients and identifying family resources to provide transportation so the in-person visitation can still occur during this crisis. We actually have a case in Yamhill County where the attorney and case manager are working really hard to achieve reunification and they've been creative in looking into ways safety service providers can provide virtual check-ins to assure safety. And this idea, Jess [Phonetic 00:40:32] is actually currently taking this plan under consideration for a transition home. I could go on and on with the incredible examples of work that case managers are doing. I've been so appreciative of their work and I'm happy to continue to report on the outcomes we've seen as a result of their collaborative advocacy. As Keren mentioned, we look forward...we're excited about expanding PCRCP to Multnomah County. We've been working to recruit qualified applicants and provide information and assistance as they draft their proposals. We've had a lot of interest and I look forward to reviewing those and putting together a

model that works well for Multnomah County. Thank you so much for your time today and commitment to public defense. I'm happy to answer any questions that you may have.

Chair Ramfjord: Okay. Any questions from other members of the commission? I really do appreciate all the work with case managers. This program's been a wonderful program and it's really wonderful to see that program being expanded so that's great. Anything else?

Lisa Ludwig: There seem to be some new questions coming in.

Chair Ramfjord: Yeah, I see some questions about are there any challenges being made to the video visitation in lieu of a person whose visitations are pending in various counties? Is that something, Dana, that you could respond to?

Dana Brandon: Yeah, could you repeat the question? I'm not on the live feed so I don't see that.

Chair Ramfjord: Yeah, sure. The question is from Robert Raschio. It's are there any challenges being made to video visitation in lieu of in-person visitation? Are any such challenges currently pending in any counties that you're aware of?

Dana Brandon: I'm not sure I understand the question. I think there are absolutely challenges to virtual visitation, I think. And I can answer there's access to technology, I think that's a huge one. I don't know, Keren, if you want to jump in at all?

Keren Farkas: Sure.

Dana Brandon: Or if the question could be better clarified?

Keren Farkas: Am I unmuted?

Chair Ramfjord: I believe so. So you should be able to go live?

Keren Farkas: Am I unmuted?

Male speaker: Yes.

Keren Farkas: Hi. So, I think if the question is about legal challenges, that is something that I know a lot of providers are working to think about how to challenge. And for any providers that are interested in joining that conversation, we are having a juvenile work group that you can join where we're talking about the challenges that COVID-19 is bringing to practice. And there's also an OPDS webinar tomorrow that is being presented by one of our deputy public defenders from the Juvenile Appellate Section. That's specifically about ideas on how to challenge visitation barriers and shelter hearings amidst the COVID-19 pandemic for providers that are interested in thinking about how to challenge virtual visitation.

Chair Ramfjord: Okay. I guess we'll move on then. I apologize to everybody on the other end of the line, I didn't mean to monopolize the screen here. We're hoping that we'll actually be able to have different people come on more regularly. I could live without seeing my own face so much myself. But why don't we move on then to the next topic which is contract extensions generally. Ms. Pate, are you available to give the update?

Heather Pate: I'm here. I'm here, it says live so I guess I'm on. Good morning. Chair, commissioners, and Chief Justice. I'm Heather Pate, I'm the Contracts Manager at OPDS. I have two brief updates. The Criminal RFP applications were due on April 10th and we received 60 of them. We allowed for 35 extensions. These were granted to entities that required more time due to the current circumstances and we expect to see all those applications in the office by April 24th. As Keren mentioned, the Multnomah PRCP RFP has closed. We received nine applications for that RFP and the team is currently reviewing them and working through that process. Along with working on RFPs and all the normal work that the analysts do, there's lots of new and interesting things coming up with this new crisis we're in. So, lots of putting out fires, helping contractors work through situations that we could never have dreamt of before. It's been an interesting time.

A quick heads up that the agency will be bringing an updated payment policy to the commission in the next couple of months. We're working on new policy changes and process improvements in the AP process as well as the contracts process that need to update that payment policy before new contracts go out. So that'll be coming in the next couple of months, May or June. So just a heads up so you can be looking for that. I did see a couple of questions regarding... Let me go to the questions. When we're going to make decisions about either new contracts or extending current contracts. Lane mentioned in his overview that the legislature is going to be taking a look at the budgets after the revenue forecast on May 20th. I don't expect that we will know anything more to give you an answer until after that date. We don't really know what we're going to get, if we're going to get anything. We're optimistic, obviously, that we'll get something. But we have to wait for that revenue forecast. Lane, do you have anything to add to that?

Lane Borg: No. Just I think people should be aware whether this is our Don Quixote moment. I did, on behalf of the agency, send the Governor a letter last Friday requesting the release of the whole 20 million [Distortion 00:47:12] in discussions because, as Kimberly said, there are lots of discussions going about whether to release it or not, whether to release part of it or not. And so we are trying to advocate, and I am advocating quite strongly, for if some of the money is released, that some of it be available to the PSA. Because right now, in terms of what we had available in the PSA, we pretty much contracted in the extensions. We could sustain that but to keep the reforms going, we do need more money. And so we made that clear. Who knows what's going to happen in that but it has been clear. We're not going to know what the situation is until after May 20th with that revenue forecast.

Heather Pate: Any other questions?

Chair Ramfjord: All right. Why don't we go ahead and I'm not hearing any other questions so we'll move on to the next item on our agenda which is Public Defense Contract and Non-Compete Agreements and Eric Deitrick is going to talk about that so he will be up now.

Eric Deitrick: Hello, everyone. Can you hear me?

Chair Ramfjord: We can, yes.

Eric Deitrick: Okay. Chair Ramfjord, Chief Justice Walters, members of the commission, participants on this call, my name's Eric Deitrick with OPDS. This topic is about non-compete agreements in public contracting, specifically with contracts by the PDSC. And I just wanted to provide some context as to how this became an issue we were aware of. On March 2nd and 3rd of this year, Amy Jackson, Erica Herb, and I traveled to Central Oregon to Bend for some agency-related business. We were talking with judges and staff, public defense providers, and other stakeholders. During that trip, we met with an attorney who was a member of a consortium who was very interested in submitted their own contract in response to the RFP but said she was precluded from doing so because she was subject to a non-compete agreement.

This was very confusing to us because we had not heard of non-compete agreements in the public defense contracting setting. And so that night, most of us when we were in our hotel rooms, were going through a lot of the documents that were submitted last fall as a part of the contract extension to see whether there were non-compete agreements, whether this was just a one-off or this was kind of a persistent thing. And we found that there were a few other examples of where this was happening. It didn't seem to be overly pervasive but where it was occurring, clearly it had an impact. Because the attorney who we were speaking with believed that it had legal impact, legal effect.

Just to give you an example of some of the non-compete agreements that we submitted as part of the materials. The one from Los Abogados talks generally about a duty of loyalty to the entity which could be construed as encompassing, not competing against other members of the entity based on that duty of loyalty. The Bend Attorney Group had a pretty much more defined one where it said that contractors shall not engage in any activity during the term of the agreement to the detriment of or risk to and/or have a negative financial impact on the Bend Attorney Group. Specifically, the contractor agrees not to engage in any activity which shall be considered competition with the Bend Attorney Group's interests including but not limited to competitive bidding for services for a State contract from OPDS. The third one was from Klamath Defenders and that one was the most proscriptive of the covenants that we found. It specifically, in section 2.1, prohibited members of the group from even talking

to other members about leaving the group. It established remedies for those and it, pursuant to the agreement that was signed by members, continued four years. Thereafter, if someone left the consortium, they would still be prohibited from competing against the group. It defined all of the consortia business that was not client-related as a trade secret that was prohibited from disclosure to OPDS or any other member of the public.

So why is this relevant? Since I've been at the agency and even before, I've heard this commission talk about the lack of competitive bidding for contracts. And certainly, the existence of these things, even though probably not prevalent, is something that has impeded that process. It's particularly troubling from the agency perspective when you have a contract group in a given jurisdiction that basically has a contact monopoly over that jurisdiction. Anyone who wants to enter that workforce would be forced to sign one of these. And so it's really a situation where to work, you would have to sign one of these. But thirdly, we did look into the legality of these. Erica Herb did legal research and wrote a memo to Lane and I summarizing non-competes in public contracting in Oregon.

First of all, non-competes generally are permissible in Oregon but they're disfavored and there's a three-part test that must be satisfied for them to be enforceable. And clearly, they need to be in the public's interest, which these are not. The second finding Erica made was that consortia actually cannot require members to sign these, it would be prohibited by law. And thirdly, that we have authority to prohibit such agreements amongst our contractors. And so, I wanted to bring this to the commission's attention to let you know that we will be putting in a contract term that covenants not to compete. Similarly construed legal provisions will be prohibited from our contracts going forward because it's not in the public's interest to limit how the agency can go about providing public defense services statewide. I'm happy to answer any questions about that if commission members have any.

Mark Hardin: I have a question. Does the agency require the consortia to share the text of any subcontract with its attorneys with the agency?

Eric Deitrick: Commissioner Hardin, that's a great question. It is in our contract terms that they shall share any member agreements with the agency. What I have found — and this is part of what we've been really trying to get at — is they'll have a membership agreement for the members and that is required to be disclosed to us. But sometimes, there's subcontracts and those may have terms that we're not aware of and that's what we've been really trying to wrap our arms around as an agency, to make sure we have all of those agreements forwarded to the agency. There could be more out there that we don't know about, but I think most providers did a good job of submitting their information for the extension. But yes. To answer your question, they are required to provide that.

Chair Ramfjord: Okay, are there other questions? Okay. I'm sure that people who engage in these practices thought it was appropriate and reasonable under the

circumstances, but I think that down the road, it is advisable not to have those kinds of provisions in contracts going forward. So, I appreciate your work on that. Any other comments or...

[Crosstalk 00:56:22]

Chair Ramfjord: Go ahead.

Eric Deitrick: No, just to follow up on that. We have heard back from the providers who use these and you're correct. So, we have had that response, that they didn't know they weren't appropriate, they're not going to use them anymore. It hasn't been a tense conversation at all with the providers. They have acknowledged that this was something that they thought was a good idea but that they're not going to utilize anymore.

Chair Ramfjord: All right. Thank you very much, appreciate that. Yeah, I just want to make sure there's no sense of implied criticism here. It's just a question of our thinking that it's appropriate to change that contracting term. All right. Moving on then if there's nothing further. Any further questions? I'm not seeing anything on the screens. Okay. All right. Why don't we move on to the ABA Study Update, which again, is you Eric? If you'd continue, that'd be great.

Eric Deitrick: Yeah, thank you, Chair Ramfjord. For those of you who've heard me talk about the ABA Study before, you're probably going to hear some repetitive information, but I know there's new people on this meeting, we have a new commissioner. And so, I just want to provide the full context of where we are. In November 2017, we met with the ABA about possibly doing a caseload/workload study in Oregon. The legislature funded that in February of 2018 along with the Sixth Amendment Center Study. We know that the Sixth Amendment Center Study has been complete, published, and it's had impact throughout Oregon. The ABA Caseload Study really tries to measure two things. The world of "is" and the world of "should."

What I mean by that is they are trying to determine what should a reasonable caseload and workload be for attorneys in Oregon, and at the same time, contrast that with what we're actually doing now. The "should" is the really important piece, that's the caseload standard piece, that's what we are aiming for throughout this process, to figure out what we should be doing. The "is" piece provides the contrast so that we can identify gaps in our system, what are we doing well, what are we not doing well. For example, in states that have gone through this process, what they've found is actually the world of "should" when it applies to homicide cases is actually what's going on. That state systems, public defense systems, generally triage themselves, and the most serious cases get dealt with in the way in which they probably should and that trickles down to lower cases where the cases and the clients aren't receiving the time that they should. We are working on this with several partners including the American Bar Association, Northwest Accounting Firm, Moss Adams, and we

had been working with JusticeWorks as well, who produces the defender data software for the timekeeping.

So, determining the world of "is" requires the ABA and Moss Adams to look at several things. They're going to look at our agency information about caseloads and funding, they're going to look at court information from OJD, they're going to do an FTE analysis to determine how many FTE we actually have now. And the other piece to this was the timekeeping piece which, as you know, we have been working on for more than a year and we had excellent buy-in from the public defense community. After one month, I received a report from defender data on general compliance. The compliance numbers were really good, so I was really optimistic about how the process was going to go. But with COVID, we ended timekeeping.

I think in my email that I sent out, I talked about possibly revisiting that. I just want to announce now, we're not going to be revisiting timekeeping. Both the ABA and all the other partners think that what's going on in our courts now is not anything reflective of what a normal time period is and so we have ended that. But I mention that just to bring to everyone's attention that that doesn't in any way mean the ABA study is stopping. This was just one piece to the study, to provide one piece of contrast, but it is still going forward. So to determine the world of "should," what should caseloads be, there is a survey tool that's been developed by Moss Adams. This survey tool will be disseminated to attorneys in three general categories. There's adult criminal, there's a second category for juvenile dependency and delinquency, and there's a third category for appeals.

What the survey does is it asks the participants to estimate in their professional opinion how much time should be spent per case task for certain types of cases and ask them to estimate what percentages of those cases do they believe should go to trial versus plea. This survey will be sent out to the participants, it'll probably be about a month. The two updates I have for the commission since the last meeting is in late February of this year, the ABA members flew out to Portland, we had our first kind of kickoff meeting with Moss Adams as well as a former member of the Criminal Justice Commission, our team to start developing the survey tool, and to start developing a list of who's going to participate in the survey.

So yesterday, we had a meeting with the ABA and five criminal defense attorneys throughout Oregon. We had Rob Raschio, Thad Betts, Brook Reinhard, Alyssa Bartholomew, and retired Judge Ed Jones, who went through a list of criminal defense attorneys throughout Oregon and curated that list so that we have probably about 140 attorneys now that that committee, the selection committee, has identified to take this survey. So that will be going out probably about a month from now according to the current timeline. These aren't people we have contacted ahead of time. So many of these folks, we will be reaching out to them and they will hear of this first through us, through this process. The goal is to get as many responses as possible. We will be pushing folks to take the

survey. It's not a quick survey and so we know that we will not get 100% compliance. The goal is to get as much compliance as we can.

The survey is done once, Moss Adams then crunches numbers, it's sent out a second time with informed feedback. The participants take it a second time and then the final Delphi will be in Oregon probably sometime this September if possible. Some general updates as to why. You all have heard us talk about NAC standards which were formerly associated with the American Bar Association, the 1970s, 400 misdemeanors, 150 felonies, which have been disavowed by most groups, including the ABA. In talking with Steve Hanlon and Malia Brink from the ABA, they are invested in creating new national caseload standards. Their goal has always been to do a meta study of states that have gone through this Delphi process.

They have decided for statistically significant reasons, they would have to have 13 state studies done before they could create national standards, and we are state 13. Although the ABA has currently conducted five — Colorado, Missouri, Louisiana, Rhode Island, and Indiana — the National Center for State Courts and the Rand Corporation have also done their own Delphis in other states. And so, they're up to 11, New Mexico and us are 12 and 13. The ABA is planning a symposium in October where they will formally disavow the NAC standards and create new recommendations for adult criminal caseloads nationwide. And that's where the urgency has finally kicked in with the American Bar Association, to get this done and get New Mexico done before that October symposium.

We have not yet determined who will be participating in the juvenile Delphi and the appeals Delphi. Those decisions will be made quickly but there was a particular urgency to get the criminal one off the ground, given that October symposium in St. Louis that may become a virtual symposium, I don't know what's going to happen. But that was the timeline that at least got everything moving. That's the update I have for now. The goal is still to have the final report including all three categories published before the legislative session kicks off in '21 and we're still on a good timeline for that. I'm happy to answer any questions.

Chair Ramfjord: Okay, great. That was very helpful. I'm glad to hear that the process is continuing to move forward that expeditiously. That's really good news. It's always a concern in these kinds of circumstances that everything gets delayed but I'm glad it's continuing to move forward. Do other people have questions for Eric?

Kristen Bell: I have a quick question. I don't know if I'm...

[Crosstalk 01:07:31]

Chair Ramfjord: You're on, you're on.

Kristen Bell: Okay, thanks. Thanks, Eric, for that report. I have just a question about who the survey will go out to. You described it going out to defense attorney practitioners and I was curious about whether it would go to any judges or other even DAs or prosecutors, just have a broader sample of information about answers to that shared question.

Eric Deitrick: Commissioner Bell, thank you for the question. No, the survey is just going to go out to criminal defense attorneys. The goal of the ABA is to basically quantify the Strickland standard. What does it take to provide reasonably effective assistance of counsel? And they will be asking the surveyors to rely on professional standards and judgments and so that's why they really want criminal defense attorneys, those are the people who are best familiar with the professional standards. And Steve Hanlon points out, it is a group of judges, prosecutors, and academics and defense attorneys that put together the ABA standards. And so, they have been informed in setting those standards, but we really want to ask the defense bar because they're the experts as to how much time should be spent per case task, per case type.

It's a good mix, I think we've got a good geographic mix, the committee went through yesterday. It's probably about 40% to 45% attorneys who are in private practice. I'd say maybe then about 35% who are members of contractor groups, public defense contractor groups and maybe 25% to 30% that are in nonprofit public defense offices. So it brings in attorneys from all the different types of entities around the state. But no, there won't be judges or prosecutors in the process. Again, Steve is very proud of this process and likes to constantly remind groups that prosecutor groups from around the country have reached out to the ABA to have them do a similar study on caseloads for prosecutors, but they're solely focused on defense right now.

Chair Ramfjord: And just to be clear on that, I think it's important to point out, too, that in these other states where this has been done in the past, it's been done in that same method, with that same method, of only relying on defense contractors. So that getting the data to line up with that, in a sense, for doing something nationally, it might be good to do it consistently. Any other questions?

Lane Borg: Per, the Chief had a question.

Chair Ramfjord: All right.

Chief Justice Walters: I guess I can't understand if we're not keeping time how we can tell whether this is accurate then. People are estimating and we're going to lose the estimates of how long it should take to decide what the standard is. In the other states, has that been based on people's estimates or has it been based on actual data, timekeeping data?

Eric Deitrick: Chief Justice Walters, thank you for the question. The caseload standards that have been proposed through all of these Delphi studies have not relied upon timekeeping. And the Delphi methodology itself, which was developed by the

Rand Corporation, is a methodology that tries to bring consensus to areas that aren't easily reducible to consensus. And so, the best way to do that is to break everything up into pieces and quantify it. The timekeeping piece has always been a contrast to the caseload study and that contrast serves two purposes that I can think of. One is again, to show, based on what the Delphi group, the surveyors, based on what they think, how much time should be spent on a murder case or on a property crime felony or on a misdemeanor case, how much time should be spent on a case like that in the average case.

The timekeeping can show, again, one, where we're doing a good job. Maybe we are spending a sufficient amount of time in court on misdemeanor cases. Maybe we don't need to be in court more. Maybe we're spending enough time on client communication in homicide cases. So, it can identify where we're doing things well and not. But the second piece is the shock factor. In every one of these reports that's been issued, it really provides a contrast between what attorneys are doing now versus what they should be. There's value in that shock factor for policy advocates, legislators, to see how big the gap really is. But that timekeeping itself has not been used in any of these other studies to actually form what the caseload standard should be, if that helps.

Chair Ramfjord: Chief, this is Per again. I'd add to that answer a little bit. I think that this type of process is typically used to estimate, as Eric said, things that are very difficult to quantify. How long is it going to take to engineer a particular piece of software? How long it's going to take to engineer a particular building or whatever? Things that are difficult to quantify. It's been found that doing it by consulting experts actually is a more effective way than simply looking at what people have done in the past, particularly in a setting like this one, where there's a suspicion that people are not spending enough time on any given matter, so that having them record their time on what they're actually doing really doesn't give you a good glimpse into what the "should" world should be. Eric, am I saying that fairly?

Eric Deitrick: Sure, Ramfjord. Yes, you are. That's accurate. It's something that's used in the sciences and the social sciences for these exact types of decisions.

Chair Ramfjord: Other questions? All right. Hearing no other questions then, I guess we'll move on to the staff update and we start with Ernie Lannet, I believe.

Ernest Lannet: Chair Ramfjord, members of the commission, and Chief Justice Walters. Thank you. This is Ernie Lannet, I'm waiting for my live feed to come up which I'm sure it will in a second. But in the meantime, a voice from beyond. I'm the Chief Defender of the Criminal Appellate Section. I'm here to report on the Appellate Division in its entirety at this time, on behalf of myself and Shannon Storey, the Chief Defender of the Juvenile Appellate section.

As you know, in appellate practice, usually people only end up in the same room once when there's an argument before the court. So appellate practice has kind of been more conducive, I think, than the rest of the system to the new realities that we're operating under. I'm happy to report that the appellate courts and

the Department of Justice, as I think we also have been very responsive to these new realities and have felt like we've been very included in the discussions about what kinds of changes need to be made. We gave feedback regarding the Chief Justice orders through several means, we had participation in the Appellate Courts Work Group that was led by Judge Nakamoto that met three times. We had juvenile appellate practice. There's JCIP, who have their own work group consulting, and then also had membership on the criminal trial practitioner's workgroup that helped give feedback to proposed changes in practice.

There was actually a surprising amount of consensus between our offices and our counterparts at the Department of Justice, in understanding that appeals are already a very lengthy time to get through them. That we really, we're hoping to minimize the impact that this has for our clients. The Department of Justice also were not wanting to slow down the system. For example, as proposed, perhaps suspending notices of appeal, through safeguards that are already in place, through a statute we thought that both our offices as well as the private practitioners that are out there could meet the very few jurisdictional requirements that are required to initiate an appeal which would be the filing of a notice of appeal.

And that really is the main priority is making sure that we at least get a notice of appeal in the door, in a courtroom's door, to [Distortion 01:17:27] and are also subject to extensions from the court based on case-by-case need. We've seen orders from both appellate courts that have adjusted the kind of expected timelines they're expecting things to get in as far as filings, which they've shown great understanding that we're dealing with some reduced capability as far as it's really the administrative part of getting things in rather than our attorneys who are able to do the research at home and writing at home and teleworking. But of course, there, we've also had some impacts, too, because everyone's parents are now working with remote schooling and the impact has been far and wide. But we are able to kind of keep operating. And that's kind of going for the rest of the appellate system.

I'm happy to report there was a meeting of the ORAP Committee this morning that Josh Crowther attended. That was done by videoconference. That's the Oregon Rules of Appellate Procedure so that's just the basic rules that the appellate courts work under and we work under. The briefing on Oregon Supreme Court cases continue as does the Court of Appeals. The major component of the system that is undergoing change right now is how cases are being submitted. Pre-COVID, we would have the opportunity in any Court of Appeals case to identify cases that we'd like to appear and answer questions from the court or present clarifications on our argument. It's an important part of the process, because although we try to answer everything that we can that comes up in briefing, in the written submissions, and getting ready for the case submission, there's always things that we see or new cases that come out in the law that we want to address. It's an important process but we don't do it in every case. The court is trying to minimize the delay it's taking for cases though,

because it's allowing those cases that we weren't going to be appearing to argue to be submitted on the briefs as they would normally but then also postponing cases for submission at a later point when we can do argument. That's going both for the Oregon Court of Appeals and the Oregon Supreme Court.

The next scheduled arguments for the Oregon Supreme Court, the ones that were not postponed, were already scheduled for September. So that's what we're looking at right now, is for starting back up then. Arguments that were scheduled between now and then are being postponed except for, I think at this point, there's one case that they identified as one that would be amenable to an argument because of the time considerations on it. That's not in our office but there is that possibility. We have a meeting with the Chief Judge and the Solicitor General and his deputy next week by teleconference. We're going to be discussing the possibility of oral arguments by videoconferencing. So we're looking at that also.

But really, the important part is that the briefing is continuing, the notices of appeal are being filed, and when we can, we're getting cases submitted. And the court actually is able to do its work as far as writing opinions remotely, so we're also seeing opinions coming out and being able to respond to those. I'm happy to report that we have been able to keep in contact with our clients. While this meeting's been going on, we've had one of our — we have two collect call days a month, where on Thursdays, inmates that are incarcerated in State institutions can call in collect to our office. I saw while our meeting was going on that we were having some technical difficulties with that, I think it was with their Telmate system. But two weeks ago, it went off quite well. So we are being able to have those conversations with our clients. We're also getting mail. There are a lot of questions about current circumstances and what their options are. We're closely following what's going on in larger discussions with regard to the OJRC and efforts for release.

We have very few tools as part of the appellate process for that kind of relief. In fact, the statutory relief is actually a stay of sentence pending appeal. So stay of execution. So that would mean basically that we would be asking for someone to be released while their appeal gets decided. And then depending on the outcome, they may have to go back. So it really is not perfectly with the kind of health crisis that we're dealing with now. But we are looking into that. In particular circumstances in that kind of motion, the likelihood of success on appeal is a major factor on that, along with where they would be if they were released and being able to report back. But I have attorneys that are looking into that and also giving our clients information of other efforts that are going on out in the greater community about this.

Particularly with the State habeas packet that I think people have probably seen that have been put together through coordination with OCDLA and OJRC's COVID questionnaire that they've been sending out and trying to get conditions improved for our clients. We still have our attorneys meeting by videoconferencing for their team. So we're still able to have some collegiality on

discussing issues and having some cohesion in positions. As far as the Juvenile Appellate Section, Shannon wanted me to report that the number of incoming cases that they have compared with this time last year is down by about 50% so this is having an effect on the number of cases coming into the system. But the number of briefs that they are filing is above what they were doing before.

I think you're going to see some of that because usually, we have attorneys that are juggling getting ready for appearances in court to argue a case and briefing cases and submitting them, and right now, we just don't have that other component which does take a...it takes a significant time investment because we do prepare for oral arguments with collaboration of a team of attorneys. So, it is one of those things that takes up time of our attorneys but we think it's well worth it. In addition, the Juvenile Appellate Section has had assistance meetings with Marion County juvenile providers. The webinar that is going on tomorrow was referenced earlier with regard to maintaining visitation and motions to dismiss. And like I said, they also were able to both assist individual attorneys that are reaching out to them about motion drafting and then also with getting put on the larger Chief Justice orders that have been in play primarily through JCIP, which is the Juvenile Court Improvement Project.

So we are, of course, having our own difficulties as everyone else is but we're happy to report that we're staying operational and we're keeping up with our primary responsibilities and making sure that appeals are progressing. I'm happy to answer any questions.

Chair Ramfjord: All right. Thank you very much for that report. Anybody have any questions for Ernie?

Paul Solomon: Yeah, I have a question. Ernie, you referenced conversations that you're having with people in custody through the Telmate system. How are you able to ensure confidentiality? My understanding is those lines are monitored.

Ernest Lannet: Well, this has been an issue that we've put many resources into. The Telmate system that inmates use when they make their usual calls and how that is set up is different than calls to attorneys during these collect call days. So, we've been assured that they are attorney confidence...confidentiality has been ensured in these calls. We've taken efforts to make sure that we could verify that with enough success that we're continuing to have them, but it always is one of those things that we revisit. We always have the availability of specially setting a call with an inmate in custody and having it on another type of private line for an attorney conference. But we're told that these are similarly situated to have that ability.

Paul Solomon: Great, thank you.

Ernest Lannet: [Distortion 01:27:12] when we're talking.

Chair Ramfjord: Okay. Any other questions? All right. Thank you, Ernie. Moving on to Eric, staff update from you as well.

Eric Deitrick: Chair Ramfjord, Chief Justice Walters, members of the commission. Eric Deitrick again, and just wanted to provide an update on what our General Counsel team's been up to over the last month, month and a half. Just to touch off of what Commissioner Solomon mentioned a second ago. There's also been issues with confidentiality in the trial level at the jails with phone calls between pre-trial detainees. It's something that Erica Herb's going to talk about in a little bit here. But yeah, that's been an issue at the trial level, is making sure there is confidential communication when folks are in custody in a county jail. In a lot of ways, we've been busier than ever.

One of the things just touched on by Ernie was habeas petitions. I had talked to many people who do public defense and I've followed the Pond and so I know many of you who are listening are getting called by former clients who are incarcerated who want to know what their remedies are, want to know what they can do, have questions for you. And so, I do want to thank some of the advocates, and particularly Attorney Tara Herivel who put together a habeas corpus packet, OCLA has disseminated it, we have it available. If you have clients that are reaching out to you, we can get you that material to get to the client, make sure that they have that information available. We continue to prepare for the US Supreme Court to rule on *Ramos v. Louisiana* on non-unanimous jury verdicts. I expect now that will not happen for some time, probably not until the summer.

There has been, though, discussions based on concerns that if a ruling goes in favor of not permitting non-unanimous jury verdicts, that there's going to be a flood of post-conviction relief filings at the circuit courts around the state. So, we have been coordinating with ODJ and DOJ on what we can do to prepare and try to at least create a plan going forward regarding representation and litigation so it's not a mess. The third thing that Lane talked about on his weekly phone call this week, I know that there are problems with our NRE system, you all know there are problems with our NRE system. And so, I want to get a group together, similar to what PDAG is for Lane in terms of providing him with guidance on improvements that can be made to the public defense system. It's time that we have a similar conversation about how we provide you all with the expert services you need in your cases. There're clearly things that can be improved system-wide and there's frankly not as much consistency right now as there should be.

And so, I will be reaching out to the public defense community writ large, to see if people are interested in serving on a work group to look at our NRE system going forward and ways to improve it. We're continuing to try to work with other people here to improve our website. We just updated our public records request page. We're developing kind of like a page for clients. We want to have a page where clients can go to get some general questions answered and maybe a list of what's expected for them by their attorney throughout the

representation process. But overall the goal is over the next few months to just make the website more user-friendly and we'll continue to work with our IT department on that.

We're working with our accounts payable team right now to update our payment policy. Because of the contract changes we're going through, in terms of getting away from the case rate system, there's some corresponding changes that need to be made to our payment policy. And so, we've been going through a group edit of that, trying to get that finalized by the next commission meeting in May. And finally, we just continue to assist the contracts team, the AP, accounts payable staff team, and Kimberly, as things pop up in their workload that they need research or questions answered on. With that, I'll turn it over to Erica.

Erica Herb:

Okay, am I live? Looks like I'm live. Good morning, Chair Ramfjord, Vice Chair Ross, Chief Justice, members of the commission. My name is Erica Herb and I work as Deputy General Counsel at OPDS. I just wanted to give a quick summary of a research memo that I did produce at the request of the Executive Director and the General Counsel. OPDS had received reports that during the current COVID-19 outbreak, some county jails were not facilitating and, in some cases, even preventing our public defense clients from communicating confidentially with their lawyers, so I was asked to research the question of whether those clients continued to have the right to confer confidentially with their attorneys. And the answer's yes and I'll just give a quick summary of the memo that I wrote.

There are three basic sources of law that give rise to the right to confer confidentially with your attorney, the Sixth Amendment to the United States Constitution, Article I Section 11 of the Oregon Constitution, and a new statute that the legislature enacted in 2019. It was House Bill 3249 and both the federal courts, and the Oregon courts have held the constitutional right to counsel also includes the right for criminal defendants to confer confidentially with their lawyers. It's an integral part of the right to counsel. The federal courts have addressed the confidentiality issue in the context of civil cases arising out of inmates suing prisons when prison officials were reading the legal mail of the inmates. The federal courts have found that the reading of the inmates' legal mail without their knowledge and outside their presence violates the Sixth Amendment and did warrant injunctive relief.

The Oregon courts have addressed the confidentiality right in cases where drivers convicted of driving under the influence of intoxicants were not permitted to confer privately with an attorney before deciding whether or not to take the breath test. And those cases have found, like the Sixth Amendment, that Article I Section 11 encompasses the right to speak confidentially with an attorney. So, from both the federal and the Oregon cases, it's clear that both constitutional provisions require the local jails to continue to allow public defense clients to confer privately with their attorneys, even during this crisis.

And moreover, the courts have also talked about the importance of clients having the ability to meaningfully exercise their rights.

And so, from our perspective, that means that the county jails must also permit those incarcerated to communicate with their attorneys with reasonable notice and during business hours because it's no use to have the right without a reasonable right to exercise it. So that was the gist of the memo. It was circulated on the Pond and it is available to any providers who request it. With that, I'm happy to answer any questions.

Lane Borg: Per, if I can just add to it that they did request that Erica and Eric's office do that memo. But I do want to say that we have, as part of our outreach and work with other agencies, we have worked with Jason Myer at the Sheriff's Association because it's not widespread, we aren't seeing universal desires to cut off communication. I think it's just people trying to work through a scary situation. And so I wanted to have both the legal background to support the lawyers doing the work out there but we've also been reaching out to individual sheriffs and through Jason, trying to facilitate that kind of communication and what we can do to try to make that easier so that that continues to happen.

Chair Ramfjord: Okay, great, that's appreciated. Any other questions for Erica? All right. We'll move on to Whitney.

Whitney Perez: Hi. Thank you, Chair Ramfjord, members of the commission. I am Whitney Perez and I'm also Deputy General Counsel at OPDS. We're leaving Erica Herb up because I'm having some network going in and out and so we're saving the video to save my network so that's why you can't see me. One of the other many projects we've been working on right now is updating a part of our Quality Assurance Plan. And so, I wanted to give the commission a bit of an update on that as well.

All of us in General Counsel had started actually chatting about this some time ago and we're actually planning on being more active in conducting site visits at this stage but obviously, that isn't possible at this point. For now, we are just going to be using this time to kind of look at what had been done in the past in order to develop more of a cohesive and systematic plan for the General Counsel Office moving forward. It seemed ideal for us right now to use our time, since we can't be out in the field, to develop a framework for us to use moving forward. I think probably a lot of the people on the commission and those listening in are familiar with service delivery reviews and the peer reviews that the office has used in the past.

I think the system delivery reviews and the peer reviews were both developed early on when OPDS began as an agency. For a little bit of background, the service delivery reviews were focused more on the structure of public defense services and how those services were provided, whereas the peer reviews were focused on evaluating the quality of services. It's my understanding, since I wasn't around back when those were being done, that these two separate

reporting processes functioned fairly similarly and then because of that, they were ultimately merged into one review process instead of having two separate reviews. The benefit of the service delivery reviews is that they were very in depth and very comprehensive. They involved the formation of a task force, the selection of jurisdiction to review. There were surveys, there were separate questionnaires apart from the surveys that were sent to contract administrators. There was a team put together of five or six people who would devote up to three days, three full days to go to a jurisdiction or a site to interview people. There were exit interviews with contract administrators, report writing, and just a ton of different moving components.

So obviously because of this, the process was very time-consuming and logistically complex. Looking at the reports, which are still on OPDS's website, you can see that it took several years to go around and conduct system delivery reviews for each of the 27 judicial districts in Oregon. And obviously, if you haven't looked at the reports before, it's something that would be interesting to look at. They contain a lot of different information on the various jurisdictions in Oregon. They have information on the demographics, charging practices, court practices, the structure of the different offices, and just a ton of information about why each jurisdiction in Oregon is unique.

And so, what we wanted to do in General Counsel is take that kind of wealth of information that we already have and build on that foundation moving forward but be able to be out in the community in these jurisdictions much more frequently. And so, we wanted to pare back what was done in the system delivery reviews so that we could be there more frequently and also be able to make sure that we are ensuring Oregon's Sixth Amendment obligation to provide adequate assistance or adequate representation as kind of outlined in the Sixth Amendment Center Report. So initially, we'd been looking at trying to be out in each jurisdiction quarterly or four times a year, but once we started delving into it, it just didn't seem logistically possible to make that happen given all the other obligations we have in the office.

And so what we're looking at now is being able to divide up the 27 jurisdictions amongst us and doing site visits twice a year and we would assign each jurisdiction out amongst the three of us and then coordinate with a contract analyst so we'd have a team of two who would go out twice a year to each of the sites and spend a day. And similar to the previous site visits but again pared back, meet with providers, go and watch, do some court observation, spend some time meeting with court staff and judges, and being out in the community and seeing what is going on and what are the needs in that jurisdiction and then reporting back and doing any follow up that is needed. And so that is kind of the plan that we're developing.

Obviously, it's important to note that this isn't going to be the entirety of OPDS's Quality Assurance Plan, it's just one piece of it. Another piece of it is the complaint policy that the commission adopted and approved last year. These site visits are really just intended as a way for OPDS to be in the community and

to work with the providers and see firsthand how the delivery of public defense is going within a community. We're really looking forward to having this COVID behind us and to get back out in the community and see firsthand how things are going and to be just building a stronger rapport with all of our providers and seeing what their needs are and moving forward. So, thank you. If there's any questions, I can answer them.

Mark Hardin: Yeah, excuse me, I have a question. And that is how if...do these visits encompass delinquency and dependency and of course, if they do, how? What sorts of questions? What sorts of interviews? With specific regard to delinquency and dependency.

Whitney Perez: Thank you. Sorry, I'm trying to be mindful of the 10-second delay so it's strange, the pauses. What we are looking at doing is for the jurisdictions or the counties that are already operating under the Parent-Child Representation Program is to leave those to Karen. And so, it would be the counties that are not yet under the Parent-Child Representation Program that we would focus on for these site delivery reviews. Obviously, we'd still, as needed, coordinate with Karen for feedback and insight with her expertise when that comes up. But it would then be looking at criminal delinquency and dependency for non-PCRCP counties. And so, we would be looking at everything.

One of the benefits of being able to go into each jurisdiction twice a year is we would be able to become really familiar with what is going on in each jurisdiction and to tailor the visits to what's coming up. So, if on a particular visit, there is a particular need to focus on dependency for that visit, we could do that, or if there's something more where something is going on in criminal, we can focus that visit. So, our hope is by being out there more frequently, we'll be in a better position to be really familiar with the needs in each of the jurisdictions and to kind of tailor things and respond quicker. Hopefully, that makes sense and answers your question.

Mark Hardin: Yes, I have a follow-up question. This is Mark Hardin again. During the site reviews, I think I understood that you have sets of questions, standard issues, that you address. My question is are there sets of questions or sets of issues that you try to systematically address with regard to dependency and delinquency cases whenever you do the site visits?

Whitney Perez: We haven't developed a particular set of questions that we would be addressing for each visit. It's more just a set plan around the frequency of the visits and coordinating with our contract analyst of going out there. So, it's more of a framework around who, what, where, and when, and having the flexibility then of when the site visits come up, of tailoring it to the needs.

And so the framework we're looking at with it is going, let's say, if the plan is in January, we go, Billy and I need to go to Malheur County and so we would trigger it that proceeding December, 30 days before, Billy and I need to have, the contract analyst and I, need to have a meeting and sit down and have a

discussion a month before. And start looking at what are the issues, if any, in that county. Who do we need to start looking at setting up meetings with and then scheduling those meetings? And then have the actual site visit and then when we come back from the site visit, the contract analyst and I getting together and kind of debriefing about what occurred and what follow-up needs to happen. At this stage, we haven't really talked about developing a set of questions that need to occur at each visit, so much as a framework of how we need to be fluid in tailoring each visit as we go out there.

Mark Hardin: Okay. I have another follow-up question. This is Mark Hardin again. Essentially, do you then leave it up to the counties to tell you what their issues are, or problems or challenges as opposed to your sort of independently inquiring about various dimensions of their practice?

Whitney Perez: I think it would be both and a third on there. The third being that I think we would also, again, be reaching out for meetings with court staff and judges. So that would be the third component which is similar to what was in system delivery reviews, but again, smaller scope. And we would want to hear some insight from those that our providers appear in front of for any issues they might spot. And then as you mentioned, getting feedback from our providers about what gaps they see or needs they have.

But we would also be one to ask our own questions of them when we go there. We wouldn't want to just show up and have them say, "Well, everything's wonderful. Please leave." And that's also, I think, where the court observation piece comes in, is that when we go, setting up to watch. So, going to a shelter care hearing or something of that nature, if it's a delinquency, watching the provider handle a delinquency trial if there is one that day. And so that would be part of the coordination piece is when we decide on what day we're going, looking at what hearings are taking place that day so we can watch how our providers are doing firsthand in court to see if that causes any reason for concern in their performance in the courtroom.

And that's also how, again, it being one piece of the quality assurance piece because, again, another piece being the complaint process. When we're preparing to do a site visit, is there any complaints we've received that have caused any concern with any of the providers in that community that we can be aware of when we go into that jurisdiction that might be something that we want to follow up with while we're there.

Eric Deitrick: This is Eric Deitrick. Can I jump in for a second? Can you hear me, Commissioner Hardin?

Mark Hardin: Yes, I can.

Eric Deitrick: Okay. One of the things I wanted to say is we do want to have a developed sense of uniform questions. I know they had been for the prior service delivery reviews. And so, any ideas you have on the types of questions that we should be

asking, please forward them along to us because those will be helpful for us as we continue to develop the quality assurance model. I did just get a question on the Q&A. Kimberly McCullough said that there was a question about whether we were going to continue with the intensive service delivery reviews as we had in the past. I think the answer is undecided, but our focus right now is on developing a more routine quality assurance system that involves agency staff engaging the community with regularity.

When Paul Levy left the agency, he wrote up kind of notes about the entire history of the agency from when it was formed and some of the things that have evolved over time. There were a lot of challenges with the service delivery reviews. While they did produce helpful information for the commission, the limitations on such a coordinated effort meant that they could only do one to two service delivery reviews a year. It required the agency to coordinate with volunteer attorneys throughout the state who have their own busy schedules and spend about three days in each jurisdiction. And so, what we're trying to do is have a more nimble response for insuring quality assurance. Basically, trying to do the same thing but on a smaller and more regular scale. I don't think we can do that until we get additional agency staff.

Before COVID hit and we were looking at the SPA, we felt as though we were going to be in a position to roll out this site review model July 1st with the new contracts. I'm not certain we're going to be able to now as we don't know necessarily what's going to happen with the SPA. But that is the plan for now is to divide this data into different buckets for different staff members here and have regular semi-annual trips and ongoing communication with our contract analyst as well. Thank you.

Chair Ramfjord: Okay. Any other questions on that subject? Okay. Hearing none, the last regular item on the agenda, investigator Update with James Comstock and Steve Wilson. I know they've submitted something in writing as well.

Lane Borg: And Per, I'm just going to tee that up a little bit for folks. One of the things that I hope you are getting from the presentations by the other members of the OPDS staff and trying to have as much normalcy as possible is that the business of the agency goes on. And we are trying to best as possible keep doing what we can do, understanding that we've got additional challenges with questions about what our resources are, what we'll be able to move forward on. Before I introduce or have James and Steve comment, I would say that we are trying our best to support each of our providers where we can and authorize them to.

We don't — as people have heard me say before — we don't have, other than in Appellate Division, our own direct clients. We support the people that represent the clients. And so, we want to encourage them at all levels where appropriate to file whatever motions, make whatever challenges, litigate, advocate for your client and what you think is best and we will do what we can to support you. Within though conversations interagency, I have tried to take the tone that this is different for everybody. Not everybody's going to have the same response

and we need to assume good will. As an example, I'll say the biggest issue I have with the op-ed piece that hit so poorly within our community by District Attorney Barton in Washington County was really that the gist of it seemed to impugn the motives of people who would be asking for release of in-custody people.

And we're not, as the agency, we're not going to take a position that an individual person should or should not be released. The position we are taking clearly is the forum needs to exist to ask that question and we need to adequately resource the providers to do that. I hope and encourage people to litigate where necessary but also to engage the other stakeholders as we have with the Sheriff's Association and you might find that there's good will and that people are trying to get it right and everybody's a little bit scared. Now, with that, I will pivot to James Comstock and Steve Wilson.

We had hoped — and as many of you saw in the SPA package that we'd agreed with co-chairs in 5204, the budget bill, the Christmas tree bill — we were hopeful that there would be specific money released to the PSA to increase those rates. We're not giving up on that. I can't say I've got a pot of money here where I can go and commit to that or ask for that. But I wanted to keep that conversation going. It's an important conversation. And so with that I'm going to turn it over to James Comstock and Steve Wilson to give us an update on what's going on with investigators. I've really appreciated the fact that they've reached out, stepped up, and participated in conversations about this.

James Comstock:

Thank you. This is James Comstock. I'm an investigator with my colleague, Steve Wilson. We're going to kind of trade off here. Hopefully, we can do that effectively. We appreciate the opportunity to talk to the commission again and we appreciate the interactions that we've had with Lane as we've worked through this. We're here today because of the concern that we have for private investigators working in the public defense system. We sent out some written material as Chair Ramfjord noted this morning. We'd like to elaborate on what is contained in that.

The investigators that we're talking to are worried about being able to remain in business. Because of a combination of less work, slow payment, slow reimbursement for expenses, and a low rate overall, people are being placed in positions where they're having to choose between paying their rent, their healthcare, and business expenses and car payments. In fact, investigators working in the public defense system in Oregon are struggling financially. The description of investigators that we present isn't new. We brought these issues before the commission in August of 2019.

I'll just recap what we had shared at that time. Over the last 30 years, investigator's wages have not kept pace with inflation. In 1988, investigators were paid \$25 per hour and today the rate for noncapital cases is \$34 per hour. Just in keeping pace with inflation, investigator rates should be at \$54.77 an hour to be equivalent to that \$25 an hour rate in 1988. Investigators in Oregon

are the lowest paid indigent defense investigators on the West Coast. Across the river in Vancouver, investigators are paid \$44 an hour for non-capital cases. Investigators just like attorneys, have significant overhead. But unlike attorneys, that overhead is not really factored into the rate that investigators are paid.

The low pay rate makes it very difficult to attract and maintain skilled investigators to work on these State cases. Especially when an investigator can make at least \$75 an hour working for the federal government or upwards of \$100 per hour by working on retained cases. That's been exacerbated by the fact that payments and reimbursements for expenses have been slow and unpredictable.

Steve Wilson:

Hi, this is Steve Wilson. I'm just going to take over the next section and then James will return. When we first presented this information to the board back in August last year, we were passing on information from other investigators that we were meeting with. And at the time, they were telling us how concerned they were about the rate that they were being paid and their ability to stay in business. Most investigators are independent contractors. They don't work for an employer. They're not part of MPD or one of those nonprofit quasi-public defenders. They don't work for a consortium. So they don't have some sort of a safety net in place providing them with health insurance or providing them with sick leave, vacation days, or a way to share the costs like people do if they're in a consortium. All their business expenses are borne by the individual investigator.

And back then they were really concerned about balancing business expenses versus healthcare, liability insurance, rent. And that's just gotten worse. Investigators have been slowly turning down State cases over time, especially the more experienced investigators. For the reasons that James said before, they can just make so much more working somewhere else. And attorneys also were reporting to us back then that finding experienced investigators was becoming more difficult. And if you wanted to find somebody to work on a non-capital case, you really had to find a less experienced, new investigator whose quality of work just wasn't as good as the people who were leaving.

So back in August, the board asked Stephanie Peterson, the previous Budget and Finance Manager, to collect some information, financial data, that would allow them to help in making a decision on considering an investigator wage increase. However, the September meeting last year was canceled and then the requested material was not ready for the October meeting and it also wasn't ready for the November meeting. So, James and I returned in December to again present our concerns and the commission asked OPDS to respond with a recommendation for rate increases. There was no investigator rate increase placed on the agenda for the January meeting, and then as you know, the last couple of meetings have been canceled because of the pandemic.

So now we're at eight months since we first presented our concerns. And these are concerns that have been going on long before we presented them, and very

little action has been taken. And today the investigator community's concerns are even greater due to the way that the pandemic is hitting indigent investigators very hard.

James Comstock: So, we recognize that these are historic and unusual times. We're certainly not coming to the commission naive to the financial situation that the State is looking at. We also recognize that between the departure of Stephanie Peterson, moving locations, preparation for the legislative session and the COVID pandemic, OPDS has been more than usually occupied with these unusual circumstances.

And so, I wanted to be clear. We're not coming to the board to complain about OPDS but more to alert the members to the plight of the investigators that existed long before this current situation and to explain that we believe that this needs to be addressed now in order to protect the contract employees that are working for the State and to maintain sufficient experienced investigators to work on cases once the world of criminal defense has returned to some version of normal. A raise to the rates is long overdue and we could possibly keep investigators who might be lost, and we can help those who are struggling with these real-life problems. I'll just note, we highlighted the experience of an investigator in the written materials that we sent out.

Her experience is not unique. In fact, hers is not by any stretch, the worst that we heard. We heard from an investigator who started her business and ultimately ended up, her text back to me when I asked how things were going because I wanted to hear her experiences, so she said, "Well, I'm homeless now." She's just living out of her car and doing work for Uber Eats because her cash flow problems caused her to be evicted from her home. Obviously, there are a lot of things in play and a lot of moving parts but when people are operating very close to the edge with the rate and then the cash flow problems with longer and longer times being paid, it can tip those people over the edge.

It pushes, as Steve said, the experienced investigators into work that pays more and instead of being backfilled by new or less experienced investigators, those people just fall away. We're not naive to the uncertainty of the budgets right now but we think it's important for the commission to know that the long-term investigator issues have only increased the possibility of long-term negative impacts on the effectiveness for public defense in the state. We're asking the commission to bring back the investigator wage issue for a vote and to take this up as soon as possible. And we're happy to answer any questions that anybody has.

Chair Ramfjord: Okay. Are there questions from other commissioners?

Mark Hardin: I have a question more to Lane or someone at OPDS, actually a couple of questions. One is what are you hearing from attorneys with regard to the availability of investigators and the sufficiency of their work? And what is the position of OPDS with regard to these requests for a wage increase?

Lane Borg:

Thank you. First of all, as to quality of work, I don't really want to get into that because people have different opinions about that. You will see, and all of these are true, you'll see people complain. On the other hand, you'll see people say, "My God. This outcome that we got in a case was absolutely dependent on the good work that an investigator did." And I wouldn't say that we have anything, I wouldn't want to represent we have anything in place that purports to say this is a quality assessment of investigation out there.

James and Steve know that I've had that conversation with them about it. I am supportive of, they've certainly sold me on the concept that we have moved them backwards over time in terms of pay but that if we were to have a differential or we were to have increases, we really need to start answering that question of what sort of quality of work and differentiate between investigators that do a certain type of just, say, document gathering versus really critical witness development and case development in conjunction with the attorney. But that's one of the reasons I'm having Eric really start, we normally start with getting this PDAG for NREs but start with investigators and really focus on that.

In hindsight, it turned out not to be a good strategy. I thought it was a good strategy to get specific investigator increases tied to specific money in the SPA and we had support for that from the leadership and LFO. Obviously, that didn't get released so we need to look at that. I asked and I was supportive of having James and Steve present today simply because I want to keep this on the front burner also. And we just need to figure out how and have a conversation about how we... Maybe it's a conversation about how we allocate the \$48 million that we generally spend in a biennium on NREs. And that's something I think the commission should have conversations about once we get through this immediate what do we do about the contracts that currently end on June 30th.

But I guess I would say that what we hear to the first question you asked is it is not surprisingly, there's two things that go on. First of all — I'm not saying this to make light of it or be glib at all — but it's kind of like when you have young kids and you've got a babysitter. You don't talk about the good investigators because you keep them employed and you keep them, and you hope that others don't find out about them because they are in short supply. And really, it is a geographic thing. The more rural communities in Oregon have much greater challenges in getting services and continuity of services for them.

And so, I think that as we address this, I'm hopeful that we try to have an eye not just to solve the immediate crisis and not just to respond to the immediate crisis but that we try to think about how this is sustainable long term. Because the challenges around availability, quality, sustainability, existed — as Steve and James, I think, have made their case — existed before the COVID crisis and they're going to exist afterwards. And so that was really why, one, I want to keep on the front burner, and I want Eric to make that the first order of business for this NRE group is to really focus on investigators.

Chair Ramfjord: Yeah, I think that there's merit to keeping it on the front burner. I think that, unfortunately, I don't think we're in a position to vote on any particular increase here today, but I think that it is something we should address again in the May meeting, see where we are. We'll have a little better sense hopefully of where we are on any funds from the SPA at that point in time and whether there's any hope for that. So, we could keep the issue in the forefront. So, I would urge the commission staff to keep this in mind as an issue that we need to deal with and to develop whatever proposal we can based on the information available as of the May meeting to figure out whether we can provide some relief.

Male speaker: Absolutely.

Chair Ramfjord: Are there comments or questions from other commissioners? Okay, hearing none, we're now open for public comment. There have been some questions that have been entered along the way during the process. We've answered these as we've gone along. [Distortion 02:10:10] the Q&A session but if there are any, go ahead and ask them now. We'll give a second here for that to happen. While we're waiting for that, I do want to thank everybody for participating in the meeting this way. I know it's a little bit difficult and awkward, but I think we got a lot of information out and I appreciate that. And I want to thank the staff for all the hard work I know they put into making this system work as effectively and efficiently as it did. That's very much appreciated. And from my perspective, I think things went about as smoothly as they could. So, I am not seeing any further questions. So, absent that, is there a motion to adjourn the meeting? And anybody has to unmute to make that motion, I saw Commissioner Hardin's lips move but...

Thomas Christ: This is commissioner Christ. I move to adjourn.

Chair Ramfjord: Is there a second?

Mark Hardin: Second.

Chair Ramfjord: All right. All in favor? Aye?

All: Aye.

Chair Ramfjord: Any opposed? All right. Thank you very much everyone for participating in the meeting. I'll look forward to seeing you all again next month. Stay healthy and stay safe.

Lane Borg: Thank you everybody. I guess I should have said this before. This platform happened because of the partnership we did with OJD and the transformation to Outlook. If we had had this meeting six weeks ago, we would have been on Lotus Notes and it just wouldn't have happened. So, thank you Jim Conlin and thank you OJD.

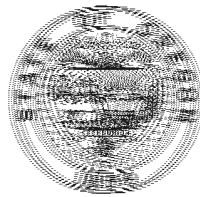
Chair Ramfjord: Thank you, everyone.

James Conlin: You're welcome.

Chair Ramfjord: Take care. Stay healthy and stay safe. Bye-bye.

Kristen Bell: Bye.

Attachment 2



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

May 11, 2020

Theresa M. Kidd
Appellate Commissioner
Oregon Court of Appeals

Lisa Norris-Lampe
Appellate Legal Counsel
Oregon Supreme Court

Sent via e-mail

Re: Oregon Department of Justice concessions and partial concessions
of cases on direct appeal in light of *Ramos v. Louisiana*

Dear Commissioner Kidd and Ms. Norris-Lampe:

In your letter of April 20, 2020, you asked the Oregon Department of Justice for a list of cases pending in the appellate courts that, in the Department's view, require reversal under *Ramos*. This letter contains lists of all criminal cases currently on direct appeal in which the Department of Justice has determined that it will concede error, in whole or in part, based on *Ramos*. As you can see below, this letter divides those cases into four lists:

1. **Full Concession (Preserved):** This list includes cases where all of the convictions were by a non-unanimous verdict, the assignment(s) of error are preserved, and the Department of Justice concedes that the entire case should be reversed and remanded for a new trial.
2. **Full Concession (Unpreserved):** This list includes cases where all of the convictions were by a non-unanimous verdict, but the assignment(s) of error challenging those convictions on jury unanimity grounds were not preserved for appellate review. The Department of Justice concedes that these cases qualify for plain error review if the court exercises its discretion to review the unpreserved claims. And, if it does so, the Department concedes that the entire case should be reversed and remanded for a new trial.
3. **Partial Concession (Preserved):** This list includes cases where at least one (but not all) convictions or sentencing enhancements were by a non-unanimous verdict and the assignment(s) of error are preserved. The

Department of Justice concedes that the non-unanimous convictions should be reversed and remanded for a new trial. These cases may require further litigation on issues related to the other convictions, and it may be appropriate to hold them in abeyance pending litigation in a lead case addressing whether *Ramos* also requires reversal of the unanimous convictions. Alternatively, if the defendant forgoes challenging the unanimous convictions and challenges based on other legal issues, the parties may be able to file joint motions for reversal in this category of cases. The Department will await further communication from opposing counsel if they are interested in pursuing that option.

4. **Partial Concession (Unpreserved):** This list includes cases where at least one (but not all) convictions or sentencing enhancements were by a non-unanimous verdict but the assignment(s) of error are not preserved. The Department of Justice concedes that these cases qualify for plain error review if the court exercises its discretion to review the unpreserved claims. If the court so exercises its discretion, the Department agrees that the non-unanimous convictions should be reversed and remanded for a new trial. These cases may require further litigation on issues related to the other convictions, and it may be appropriate to hold them in abeyance pending litigation in a lead case addressing whether *Ramos* also requires reversal of the unanimous convictions. Alternatively, if the defendant forgoes challenging the unanimous convictions and challenges based on other legal issues, the parties may be able to file joint motions for reversal in this category of cases. The Department will await further communication from opposing counsel if they are interested in pursuing that option.

Each of these lists identifies Court of Appeals and (where applicable) Supreme Court case numbers for each case. It also identifies each defendant's name and, if the defendant is *not* represented by the Office of Public Defense Services, the name of defendant's counsel. The partial concession lists also identify which convictions (or sentence enhancement findings) were non-unanimous and would require reversal.

Full Concession (Preserved)

COA / SC Number	Defendant's Name	Opposing Counsel (if not OPDS)
A162615 (S067055)	[REDACTED]	
A163469 (S067647)	[REDACTED]	
A163648	[REDACTED] ¹	
A164142 (S066731)	[REDACTED]	
A164233	[REDACTED]	
A164697 (S066815) (S066805)	[REDACTED]	
A164893 (S067627)	[REDACTED]	
A165200 (S067349)	[REDACTED]	
A165492 (S066848)	[REDACTED]	Ryan Scott
A166136 (S066912)	[REDACTED]	
A166193 (S066729)	[REDACTED]	
A166302 (S067065)	[REDACTED]	
A167042 (S067486)	[REDACTED]	
A167148 (S067516)	[REDACTED]	
A167157 (S067575)	[REDACTED]	
A167184 (S067392)	[REDACTED]	

¹ On remand from the United States Supreme Court.

Oregon Department of Justice concessions and partial concessions of cases on direct appeal in light of *Ramos v. Louisiana*

May 11, 2020

Page 4

COA / SC Number	Defendant's Name	Opposing Counsel (if not OPDS)
A167343 (S066878)	[REDACTED]	
A167351 (S067576)	[REDACTED]	
A167354	[REDACTED]	
A167421	[REDACTED]	
A167483	[REDACTED]	
A167969	[REDACTED]	
A168220	[REDACTED]	
A168342 (S067331)	[REDACTED]	
A168441 (S067594)	[REDACTED]	
A168930	[REDACTED]	
A168985	[REDACTED]	
A169227	[REDACTED]	
A169300	[REDACTED]	Laura Graser
A169467	[REDACTED]	
A169868 (S067584)	[REDACTED]	
A169960	[REDACTED]	
A170027	[REDACTED]	
A170121	[REDACTED]	
A170157	[REDACTED]	
A170249	[REDACTED]	
A170449	[REDACTED]	Jedediah Peterson
A170450	[REDACTED]	Jedediah Peterson
A171003	[REDACTED]	
A171082	[REDACTED]	

COA / SC Number	Defendant's Name	Opposing Counsel (if not OPDS)
A171199	[REDACTED]	
A171470	[REDACTED]	
A171562	[REDACTED]	
A171595	[REDACTED]	
A172189	[REDACTED]	
A173587	[REDACTED]	Steve Sherlag

Full Concession (Unpreserved)

COA / SC Number	Defendant's Name	Opposing Counsel (if not OPDS)
A160838 (S067384)	[REDACTED]	
A161140 (S067699)	[REDACTED]	
A161408	[REDACTED]	
A162335 (S067094)	[REDACTED]	
A162360	[REDACTED]	
A162420 (S066786)	[REDACTED]	
A162595 (S067701)	[REDACTED]	
A162748 (S067083)	[REDACTED]	Ryan O'Connor
A163658 (S066643)	[REDACTED]	
A163895 (S066872)	[REDACTED]	
A164001 (S066418)	[REDACTED]	

Oregon Department of Justice concessions and partial concessions of cases on direct appeal in light of *Ramos v. Louisiana*

May 11, 2020

Page 6

COA / SC Number	Defendant's Name	Opposing Counsel (if not OPDS)
A164035	[REDACTED]	
A164245 (S067403)	[REDACTED]	
A164733 (S066523)	[REDACTED]	
A164777 (S066756)	[REDACTED]	
A164920	[REDACTED]	
A164964	[REDACTED]	
A165140	[REDACTED]	
A165147 (S067529)	[REDACTED]	Kenneth Kreuscher
A165265	[REDACTED]	
A165326 (S067298)	[REDACTED]	
A165393 (S067428)	[REDACTED]	
A165536 (S066907)	[REDACTED]	
A165628 (S067081)	[REDACTED]	
A165653 (S066884)	[REDACTED]	
A165852 (S067012)	[REDACTED]	
A165869 (S067326)	[REDACTED]	
A165959 (S067108)	[REDACTED]	
A165986	[REDACTED]	
A166588 (S066883)	[REDACTED]	

Oregon Department of Justice concessions and partial concessions of cases on direct appeal in light of *Ramos v. Louisiana*

May 11, 2020

Page 7

COA / SC Number	Defendant's Name	Opposing Counsel (if not OPDS)
A166941 (control)	[REDACTED]	
A166945 (S067084)	[REDACTED]	
A167757	[REDACTED]	
A167772	[REDACTED]	Ryan Scott
A168105	[REDACTED]	
A168219	[REDACTED]	
A168296 (S067619)	[REDACTED]	
A168406	[REDACTED]	
A168552	[REDACTED]	
A168599 (S067339)	[REDACTED]	
A168695 (control) A168795	[REDACTED]	
A168772	[REDACTED]	
A168773	[REDACTED]	
A168809	[REDACTED]	
A168873	[REDACTED]	
A168978	[REDACTED]	
A169038	[REDACTED]	
A169056	[REDACTED]	
A169082	[REDACTED]	Kenneth Kreuscher
A169356	[REDACTED]	
A169663	[REDACTED]	
A169776	[REDACTED]	
A169793	[REDACTED]	

COA / SC Number	Defendant's Name	Opposing Counsel (if not OPDS)
A169796	[REDACTED]	
A169850	[REDACTED]	
A169977	[REDACTED]	
A170011	[REDACTED]	
A170014	[REDACTED]	
A170139	[REDACTED]	
A170208	[REDACTED]	
A170376	[REDACTED]	
A170434	[REDACTED]	
A170784	[REDACTED]	
A170848	[REDACTED]	
A171928	[REDACTED]	

Partial Concession (Preserved)

COA / SC Number	Defendant's Name	Non-unanimous counts	Opposing Counsel (if not OPDS)
A163332 (S066369)	[REDACTED]	1 ^[2]	
A164359 (S066965)	[REDACTED]	7, 9	
A164479 (S066548)	[REDACTED]	1, 3, 4, 5, 6, 9, 11	
A164500	[REDACTED]	3, 5, 6, 7, 8, 10, 13, 16, 17, 18	
A164981 (S066809)	[REDACTED]	1	

² Circuit Court Case No. 16CR09716.

Oregon Department of Justice concessions and partial concessions of cases on direct appeal in light of *Ramos v. Louisiana*

May 11, 2020

Page 9

COA / SC Number	Defendant's Name	Non-unanimous counts	Opposing Counsel (if not OPDS)
A165148 (S066683)	[REDACTED]	All Counts in Case No. 16CR36763	
A165343 (S067015)	[REDACTED]	3, 4, 7	
A165592	[REDACTED]	2, 4, 5	
A165647	[REDACTED]	1, 2, 5, 6, 7, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20	Jason Thompson
A165927 (S067401)	[REDACTED]	1	
A165931 (S067276)	[REDACTED]	14 ^[3]	
A166220	[REDACTED]	2	
A166617 (S066754)	[REDACTED]	1	
A166648 (S066943)	[REDACTED]	1	
A166890 (S067205)	[REDACTED]	1	
A167055 (S067190)	[REDACTED]	1	
A167088	[REDACTED]	1, 2, 3, 4, 5 ^[4] , 7	
A167187 (S067105)	[REDACTED]	3	
A167461 (S067289)	[REDACTED]	1	
A167654	[REDACTED]	2 ^[5]	

³ Only two Subcategory Facts.

⁴ On Special Question only.

COA / SC Number	Defendant's Name	Non-unanimous counts	Opposing Counsel (if not OPDS)
A167711	[REDACTED]	2, 4, 6 ^[6] ; 1, 2, 4 ^[7]	
A167780	[REDACTED]	1, 6	
A167825	[REDACTED]	2	
A167855	[REDACTED]	4	
A168101	[REDACTED]	1, 4	
A168223	[REDACTED]	3	
A168357	[REDACTED]	6	Bear Wilner-Nugent
A168388	[REDACTED]	1	
A168547	[REDACTED]	2	
A168642	[REDACTED]	1	
A168672	[REDACTED]	1, 3	
A168681	[REDACTED]	1	
A169009	[REDACTED]	1, 3, 6	
A169238	[REDACTED]	2, 3	Ryan Scott
A169250	[REDACTED]	1	
A169278	[REDACTED]	2	
A169480	[REDACTED]	2, 3, 5	Lindsey Burrows
A169948	[REDACTED]	12, 13, 19 ^[8]	
A169975	[REDACTED]	1 ^[9]	

⁵ On Sentencing Enhancement Factor only.

⁶ Circuit Court Case No. 16CR37168.

⁷ Circuit Court Case No. 17CR32899.

⁸ These counts were presented to the jury as counts 10, 11, and 17.

⁹ Circuit Court Case No. 16CR042410.

COA / SC Number	Defendant's Name	Non-unanimous counts	Opposing Counsel (if not OPDS)
A170015 (control) A170016	[REDACTED]	1	
A170071	[REDACTED]	1, 2, 4, 5	
A170145	[REDACTED]	1	
A170223	[REDACTED]	1	Kenneth Kreuscher
A170271	[REDACTED]	1	George Kelly
A170354	[REDACTED]	5	
A170399	[REDACTED]	1	
A170498	[REDACTED]	2, 4	
A170543	[REDACTED]	1	
A170592	[REDACTED]	2, 3, 5	
A170612	[REDACTED]	30, 35, 36, 37	
A170902	[REDACTED]	1, 2, 3, 4, 5, 6, 12	Lindsey Burrows
A170951	[REDACTED]	2, 5	Bear Wilner-Nugent
A171074	[REDACTED]	3, 4, 5, 6, 9, 10	George Kelly
A171147	[REDACTED]	4, 5	
A171307	[REDACTED]	6	
A171571	[REDACTED]	1	
A171574	[REDACTED]	1 ^[10]	
A171584	[REDACTED]	2	
A171624	[REDACTED]	4	
A171738	[REDACTED]	1, 2	Adam Dean
A171776	[REDACTED]	4	

¹⁰ On Sentencing Enhancement Factor Only.

COA / SC Number	Defendant's Name	Non-unanimous counts	Opposing Counsel (if not OPDS)
A171811	[REDACTED]	1	Frances Gray
A171872	[REDACTED]	1, 2	

Partial Concession (Unpreserved)

COA / SC Number	Defendant's Name	Non-unanimous counts	Opposing Counsel (if not OPDS)
A154601 (S065199)	[REDACTED]	6, 7	
A158920 (S067423)	[REDACTED]	1	
A158973 (S067423)	[REDACTED]	1	
A160640	[REDACTED]	2 ^[11]	
A162357 (S066686)	[REDACTED]	2	
A162421	[REDACTED]	1, 4, 5, 6	
A162764	[REDACTED]	6	
A162977 (S066437)	[REDACTED]	1, 5, 6, 7, 16	Ray Tindell
A162994 (S066550)	[REDACTED]	1	
A163866	[REDACTED]	3	
A164575	[REDACTED]	1	
A164597	[REDACTED]	4, 6, 7	
A164662	[REDACTED]	1	
A164910 (S066868)	[REDACTED]	1, 2, 3, 4, 5, 6	

¹¹ Circuit Court Case No. 13FE1969.

COA / SC Number	Defendant's Name	Non-unanimous counts	Opposing Counsel (if not OPDS)
A165075 (S066765)	[REDACTED]	3	
A165076 (S067244)	[REDACTED]	1, 3, 4, 6, 7, 9, 14, 17	
A165105	[REDACTED]	2	
A165236 (S067560)	[REDACTED]	2	
A165274 (S066877)	[REDACTED]	1	
A165375	[REDACTED]	1, 6	
A165499	[REDACTED]	1, 4, 5, 7, 9, 11	Larry Roloff
A165721 (S066911)	[REDACTED]	1	
A165860 (control) (S067327)	[REDACTED]	1, 2, 3	
A165882	[REDACTED]	4 ^[12]	
A165932	[REDACTED]	2	
A165938 (S067013)	[REDACTED]	2	
A165956 (S067116)	[REDACTED]	1, 4, 9	
A166005 (S067421)	[REDACTED]	2	
A166011 (S066885)	[REDACTED]	1, 2, 3, 4, 5, 6, 7, 16, 17 ^[13]	
A166020 (control) (S066990)	[REDACTED]	1 ^[14] ; 2-3 ^[15]	

¹² On Special Allegation.

¹³ On Special Allegations only on counts 1, 5, 16, 17.

COA / SC Number	Defendant's Name	Non-unanimous counts	Opposing Counsel (if not OPDS)
A166194 (S066984)	[REDACTED]	1	
A166320 (S067666)	[REDACTED]	1, 2, 7, 8	
A166335 (Control)	[REDACTED]	2, 3, 4, 5, 6 ^[16] ; 1, 2, 3 ^[17]	
A166451 (S067115)	[REDACTED]	1	
A166590 (S067524)	[REDACTED]	6	
A166796 (S067214)	[REDACTED]	5, 6	
A166825 (S067416)	[REDACTED]	5, 6	
A166925 (S067255)	[REDACTED]	1, 5	
A166953	[REDACTED]	1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13	Frances Gray
A167022 (S067067)	[REDACTED]	1	
A167036 (S067137)	[REDACTED]	4	
A167133	[REDACTED]	1	
A167190 (S067328)	[REDACTED]	2	
A167303	[REDACTED]	1	

¹⁴ Circuit Court Case No. 16CR74436.

¹⁵ Circuit Court Case No. 17CR07702.

¹⁶ Circuit Court Case No. 16CR75862.

¹⁷ Circuit Court Case No. 17CR12608.

Oregon Department of Justice concessions and partial concessions of cases on direct appeal in light of *Ramos v. Louisiana*

May 11, 2020

Page 15

COA / SC Number	Defendant's Name	Non-unanimous counts	Opposing Counsel (if not OPDS)
A167320 (S066885)	[REDACTED]	1	
A167339	[REDACTED]	2, 3, 5, 6, 7, 8, 10, 11	
A167344 (S067089)	[REDACTED]	1	
A167430	[REDACTED]	12	
A167476 (S067194)	[REDACTED]	1	
A167487	[REDACTED]	2	
A167756 (S067665)	[REDACTED]	2, 3	
A167760 (S067611)	[REDACTED]	2	
A167857 (S067601)	[REDACTED]	27	
A167913	[REDACTED]	1	
A167990	[REDACTED]	2	
A168077	[REDACTED]	1, 2, 5, 7, 9	Larry Roloff
A168231	[REDACTED]	1	Kenneth Kreuscher
A168433	[REDACTED]	1	
A168472	[REDACTED]	1	
A168708	[REDACTED]	2	
A168710	[REDACTED]	1	
A168768	[REDACTED]	2, 3	
A168835	[REDACTED]	2	
A168908	[REDACTED]	1	

COA / SC Number	Defendant's Name	Non-unanimous counts	Opposing Counsel (if not OPDS)
A168909	[REDACTED]	5	
A168999	[REDACTED]	1 ^[18] ; 1 ^[19]	
A169092	[REDACTED]	7	
A169123	[REDACTED]	4	
A169334	[REDACTED]	1, 4	Jason Thompson
A169566	[REDACTED]	1, 2	
A169585	[REDACTED]	1	
A169637	[REDACTED]	1	
A169646	[REDACTED]	1	
A169750	[REDACTED]	1, 2 ^[20] ; 3, 5 ^[21]	Bear Wilner-Nugent
A169997	[REDACTED]	1, 2, 3, 4, 16, 27, 27, 29	
A170033	[REDACTED]	1, 2	
A170102	[REDACTED]	1	
A170110	[REDACTED]	1	
A170116	[REDACTED]	1, 4	
A170329	[REDACTED]	7	
A170633	[REDACTED]	1, 2	
A170920	[REDACTED]	1	
A171035	[REDACTED]	2	

¹⁸ Circuit Court Case No. 18CR17907.

¹⁹ Circuit Court Case No. 18CR17278.

²⁰ Circuit Court Case No. 18CR08523.

²¹ Circuit Court Case No. 18CR42276.

COA / SC Number	Defendant's Name	Non-unanimous counts	Opposing Counsel (if not OPDS)
A171043	[REDACTED]	2, 3, 4, 5, 6, 7, 8	
A171044	[REDACTED]	1, 2	
A171080	[REDACTED]	1 ^[22]	
A171198	[REDACTED]	1, 2	
A171308	[REDACTED]	5	
A171403	[REDACTED]	1, 2, 3, 4	
A171458	[REDACTED]	1	
A171533	[REDACTED]	1, 2	
A171585	[REDACTED]	1, 5, 6	
A171669	[REDACTED]	1 ^[23]	
A171769	[REDACTED]	28, 30, 31, 33	
A171926	[REDACTED]	1	

As directed by the April 20th letter, for the cases in which the Department has already filed an Answering Brief, the Department will file a notice in each of the cases on the lists with a copy of this letter. If the courts would like the Department to file anything more formal in those cases, please let me know. For the cases in which the Department has not yet filed an Answering Brief, the Department intends to file an Answering Brief or appropriate dispositive motion in the ordinary course.

These lists are likely not a complete account of cases that will require reversal, but they represent the cases that the Department of Justice has been able to identify based on the information we have. The lists include only cases where the defendant has filed a brief challenging a conviction on unanimity grounds. They

²² Circuit Court Case No. 19CR20501.

²³ Circuit Court Case No. 18CR09196.

are current through May 1, 2020. Because new opening briefs are being filed almost every day, the Department anticipates that these lists will grow in the coming months. If the courts would like us to file periodic supplemental lists like these, please let me know; otherwise, we will address other cases individually through joint motions for reversal, concession briefs, or other appropriate means.

Despite our best efforts to compile thorough, accurate information in a short amount of time, we anticipate that they may contain some errors or inaccuracies in the lists. We invite opposing counsel or the courts to contact the Department to bring any errors to our attention.

Respectfully submitted,

/s/ Benjamin Gutman

Benjamin Gutman

Solicitor General

benjamin.gutman@doj.state.or.us

Cc: Chief Justice Martha Walters
Chief Judge James Egan
Ernest Lannet
Bear Wilner-Nugent
Jason Thompson
Kenneth Kreuscher
Larry Roloff
Frances Gray
Ray Tindell
Adam Dean
George Kelly
Lindsey Burrows
Ryan Scott
Ryan O'Connor
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**DEPARTMENT
OF JUSTICE**
APPELLATE DIVISION



**OFFICE OF PUBLIC
DEFENSE SERVICES**
APPELLATE DIVISION

LANE BORG
Executive Director

ERNEST G. LANNET
Chief Defender
Criminal Appellate Section

May 11, 2020

Sent via email only

Theresa M. Kidd
Appellate Commissioner
Oregon Court of Appeals

Lisa Norris-Lampe
Appellate Legal Counsel
Oregon Supreme Court

Re: *Ramos v. Louisiana*

Commissioner Kidd and Ms. Norris-Lampe,

As you requested in your letter of April 20, 2020, we are jointly submitting this letter to identify the issues that remain outstanding after the U.S. Supreme Court's ruling in *Ramos v. Louisiana* and lead cases that would be suitable vehicles for resolving those issues.

The two significant issues that remain in dispute are the appropriate disposition of cases where (1) a jury poll shows that the guilty verdict was unanimous and (2) the record is silent as to whether the guilty verdict was unanimous or nonunanimous. The parties will frame those issues more precisely in their briefs once lead cases are chosen.

Suitable lead cases on the first issue:

State v. [REDACTED] (S067569) (A168211) (preserved)
State v. [REDACTED] (A170006) (preserved)
State v. [REDACTED] (S067557) (A167674) (unpreserved)

Suitable lead cases on the second issue:

State v. [REDACTED] (A169912)
State v. [REDACTED] (A167975) (control) (A167976)

On the first issue, we suggest that at least one preserved and one unpreserved lead case be selected to ensure that the full range of arguments are resolved. Some of the cases pending in the Supreme Court also present other issues, and defendants do not withdraw their requests that the court review those issues as well. But to expedite matters we suggest that the court choose lead cases where it is not inclined to grant review on the other issues, if any of the lead cases we have proposed satisfy that requirement.

We have focused on cases pending in the Supreme Court, but we have not located suitable cases on the second issue that are currently in that procedural posture. If a case pending

in the Court of Appeals is selected, it could be certified to the Supreme Court under ORS 19.405 and ORAP 10.10.

Whichever case or cases the court chooses as lead cases, we propose that briefing and argument proceed on an expedited schedule as follows: Defendant's brief due 21 days after the case is selected, the state's brief due 21 days after defendant's brief, and an optional reply due 7 days after the state's brief. That schedule would allow the court to hear oral argument in July or August if it chose to do so.

Until the lead cases are decided, the attorneys in the appellate divisions of DOJ and OPDS will endeavor to refrain from seeking supplemental briefing for jury unanimity issues raised on appeal before *Ramos* was decided.

There may be other issues that arise in post-*Ramos* litigation, but we expect that rulings on the two issues identified above will resolve the vast majority of affected cases. Any remaining disputes are likely to affect only a few cases or to be highly fact-specific (for example, disputes about what the record in a particular case reflects about the vote on a count). If the parties are unable to resolve those disputes after rulings on the two issues identified above, we propose that they be briefed and decided in the Court of Appeals in the ordinary course. Similarly, a party who believes that the resolution of the lead cases does not determine the resolution of a case before the Oregon Supreme Court may move the court for an order allowing review and remanding the case to the Court of Appeals for supplemental briefing and reconsideration in light of *Ramos* and the opinions in the leading cases.

We look forward to working with the appellate courts to resolve these cases promptly and efficiently.

Sincerely,

/s/ Benjamin Gutman

BENJAMIN GUTMAN
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/s/ Ernest G. Lannet

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Attachment 3



Oregon

Office of Public Defense Services

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To: Members, Public Defense Services Commission
Lane Borg, Executive Director

From: Eric Deitrick, General Counsel

Re: OPDS Investigator Rates

Date: May 14, 2020

Background: The PDSC has adopted a payment policy, most recently on September 1, 2019. This policy establishes the processes for attorneys and non-attorneys to seek funds from OPDS for services provided. It also establishes substantive rules on the distribution of funds, including guideline amounts for certain types of services. For investigative services, the current guideline rate is \$34/hour.

On April 23, 2020, the Emergency Board of the Oregon Legislative Assembly met and distributed certain funds to OPDS. Specifically, there was an allocation of \$868,415 to increase the rates for both interpreters and investigators. The Legislative Fiscal Office noted that these funds should allow the PDSC to raise investigator rates from \$34/hour to \$40/hour.

Agency Recommendation: OPDS recommends the PDSC adopted the rate increase for investigators as recommended by LFO.

Proposed Motion: I move to adopt amend the current OPDS Payment Policy to increase the hourly rate for investigators from \$34/hour to \$40/hour.