

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 June 25, 2020
 10:00am – approx. 11:00am
 Via Microsoft Teams Live Event

MEETING AGENDA

1.	Action Item: Approval of Meeting Transcript – PDSC meeting held on Jun 11, 2020. (<i>Attachment 1</i>)	Chair Ramfjord
2.	Public Comment	All
3.	Action Item: Approval of Contract Extensions (<i>Attachment 2</i>)	E. Deitrick & H. Pate
4.	Public Comment	All

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_MTkWNmE2ZjYtODhjYy00M2NmLWI3NjgtMjg5ZGFhZDU1OWlw%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

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, July 16th, 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

Kaysea Dahlstrom: All right. I'm going to start now.

Chair Per Ramfjord: All right. Welcome everyone to the June 11th, 2020 PDSC meeting, another virtual meeting. Apologize for this format. It's something we have to deal with, given the existing circumstances.

Before we get going today, I do want to comment briefly on the recent events that have occurred that have been sparked by the death of George Floyd and the impact of that on our community. And I think that we live in a community that deals with racism on a daily basis. We confront it and its consequences on a daily basis. And I am very proud of the many members of the defense community that have marched in solidarity with the protesters on this issue.

And I think it's an incredible tribute to our community's dedication to members of communities of color and the fact that they bear witness to a lot of these events on a day to day basis. So, I just want to thank everybody for their support on that and just want to say how much we are really dedicated to addressing those kinds of issues to the extent we can in whatever way we can.

So, with that, I think that we'll get started here. And the first item on the agenda is the approval of the transcript from the last meeting. Are there any comments or changes to that transcript that anybody has?

Lisa Ludwig: No.

Chair Per Ramfjord: Hearing none. Is there a motion to approve it?

Lisa Ludwig: I so move.

Chair Per Ramfjord: Second?

Elizabeth Welch: Second.

Chair Per Ramfjord: All in favor?

Woman: Aye.

Chair Per Ramfjord: Aye.

Woman: Aye.

Chair Per Ramfjord: Any opposed? All right, Motion passes. So, the first item up on the agenda after that is an update on the budget. Obviously, this has been an area of ongoing

concern for all of us. And Layne is going to give us a little bit more information on that. Lane?

Lane Borg:

Thank you. And I just want to tee up and give some context. And then Julie Fetsch is going to give us a longer sort of summary or more detailed. Just for some context, just to remind people, we are in budget build now despite... Not because of or this would have happened regardless of the crisis.

We're in the process of building our current service level budget that would be submitted for review and analysis by the legislative fiscal office for ultimately rolling it into the governor's proposed budget and then into the long legislative session starting in February 2021. So, that work is ongoing, and Julie's going to update us on that.

We are also in the middle of a budget. We're right in the middle of a two-year budget. And while there have been lots of discussions and expectations about budget cuts, it's important and I want to remind people that we have not received a budget cut. Now, nobody's come to the agency and said, "Your budget is being reduced or we expect you to do these reductions." That may very well come.

But to date, all of the discussions have been exercises and trying to, as all state agencies are doing, offer information both to the governor's office and to the legislature about where our current budgets stand, where we might cut if that were the case, or what that might impact if cuts were made.

And I also want to remind people that as an independent agency within the judiciary, we may choose to follow exact branch cuts, but it's not up to the governor's office to actually make the cuts the way they could and say, "Department of Corrections or State police or Oregon youth authority." Those are other public safety partners, even Department of Justice that we have.

But the judicial branch and then us as an independent agency within the judicial branch, we could get our budget cut. We could have money taken taken back, but then that's something that we'd have to have a conversation within the agency and the commission about where the specifics of those were.

So, I know there's a lot of peer discussion. And frankly, there's likely to be a cut within this biennium, but it has not hit yet. And I don't want people to be panicking yet. But with that, I'll turn it over to Julie to give us a better idea of the kind of specifics of where we are at our budget build and where we're at budget-wise.

Julie Fetsch: Thanks, Lane. Well, good morning. For the record, my name is Julie Fetsch and I'm the budget and finance manager for OPDS. Lane did ask me to give you a quick update on the current budget reduction process as well as the '21-'23 biennial budget build. As he just said, we do anticipate there will be reductions to the current agency budget. We just don't know what those are going to be yet.

The days are winding down to the deadline when they have to make that decision. So, we should be hearing, I expect, pretty soon. We know the governor's office is having daily discussions on the allotment reduction options. And we also know that the labor unions are engaged in those discussions.

So, as I'm talking about budget reductions, I want to note two things. The first is that state agencies run on a two-year biennial budget cycle. The current cycle started July 1 of 2019 and ends on June 30th of 2021. So, we're About halfway through the current biennium. The reduction exercise that all state agencies were required to complete was based on a full biennium's allotment.

So, if they asked for a percentage of the full biennium, that reduction would need to be compressed down and applied within the one year remaining in this budget cycle. The second thing is that state budget is allotted separately to each program within an agency. Budget can't be transferred between individual agency program. And any reductions required will be specific to the individual program allotment.

Currently, OPDS has a biennial budget of \$374 million, which is allotted to three individual programs. The contracts and business service program is allotted \$10.6 million per biennium. It contains 33 full-time executive and administrative positions and accounts for approximately 3% of the entire OPDS budget.

The appellate division has allotted \$22.7 million per biennium. It contains 57 full-time attorneys and legal support positions. And it accounts for approximately 6.6% of the entire agency budget. The professional services program is allotted \$313.7 million per biennium. It contains all of the attorney contracts and all of the other case related expenditures. This program accounts for approximately 90.4% of the entire agency budget.

So, once the budget reductions amounts are determined and communicated to the agency, the commission will review that information. And they'll be the ones that set the spending priorities for the agency. At the same time that we're doing budget reduction exercises for the current biennium, we're also building a budget for next biennium.

So, the 2021 through '23 biennium begins on July 1st, 2021 and ends on June 30th of 2023. There is a set process for how the agency has to build their budget request. And I'm going to just give you a quick overview of what that process looks like. And it's important to note here that any reductions that may have been taken in this previous biennium were just one-time reductions for that biennium. We get to start with the base budget that we already had. So, we take the current '19-'21 legislative authorized budget or LAB before any reductions were taken and we build from there.

We phase in any new funding and positions that were received during the biennium. And we also phase out any one-time funding that may have been received. We add inflation. And we also request additional funding for mandated caseload if our current projections are higher than what we did in the previous biennium's projections.

We prepare policy option packages, which we call POPs, to request additional funding for any program needs the agency feels is relevant and necessary. So, even in this current environment with the state budget shortfall projected to reach into next biennium, we still want to present certain policy option packages to the legislature to ensure that we're representing the agency's needs appropriately.

The budget we produce at this stage is called the agency recommended budget or ARB. This budget document will be presented for review and approval by the commission at the next PDSC meeting in July. The '21-'23 ARB budget also requires review and approval from LFO and CFO before it's submitted to the governor's office. And that deadline for that submittal is September 1 of 2020.

The budget document then moves on to the governor's office for review and recommendations. Then it's finally submitted to the legislature for review and approval at the 2021 regular session. And just for reference, the next full regular session will be held from January 2021 through June of 2021. And by the end of that regular session, a full year after we've built our budget request, we'll finally know what the agency's budget is going to be.

Lane Borg: Chair, did you have any questions, or any other commissioners have questions?

Chair Per Ramfjord: I don't have any questions. That's very helpful. I mean, I guess the one thing I am a little curious about. The cuts that we're likely to be asked to take, is it going to be a percentage overall? How are these cuts usually suggested to us?

Julie Fetsch: When we do the budget exercise with LFO, they ask for certain identifying things that we think that we could pare down or make adjustments in. For the CVS division, there's really nothing in there. That one, we would have to lay off

people and we told them that the same with the Appellate Division. And then as far as the professional services division, LFO and legislature doesn't tell us how to spend our money.

So, if they did a cut on that one, it would likely be... I would expect that it would be a percentage. And then they would just give us that information, a dollar amount or a percentage. And then we would come back to the commission on and say, "This is where it is." And then that's when the commission would set the priorities for how the agency would like to make cuts to that.

Chair Per Ramfjord: Okay. Other commissioners have any questions?

Thomas Christ: Yeah, this is Commissioner Christ. Is there any reason to believe that LFO would itemize the reductions for our agency or any others as opposed to just do across the board 10%, 15, 20, whatever it may be? Do they actually come back and say, "This is how we want you to reduce spending within your agency"?

Julie Fetsch: I can give you a couple examples of what I would expect to see there. There are two items that every agency has. One of them is called a sow pot. And it's kind of a true up of what the salaries were versus where we ended up at the end of the biennium. And that money comes back to us. It's kind of like a... I don't know how to explain it, kind of like a kicker that comes back to a regular person. So, that sow pot is identified.

And if they decided not to give us the sow pot, that would be called out specifically. The other one is a carry forward. The agency has a carry forward amount that most agencies it's a use-it-or-lose-it. When you're talking about general fund for this agency, we have a carry forward amount.

And so, that is something that is often identified as something that would be called out specifically, just say, "We're just not going to allow you to keep the carry over." It's not that much. It's a few hundred thousand dollars. Those types of things would be specifically identified. But other than that, I would expect to see just a percentage reduction and then allowing the agency to decide internally how that would be.

Lane Borg: And Commissioner Christ, this is, for the record, Lane Borg. The thing I would add on what Julie was saying is that we would expect that those cuts would be... They can determine which pot it comes out of. In other words, they can say, "You have to take it out of CBS. You have to take it out of AD. You have to take it out of the public services account." They can't get more specific than that. They've got to just say, "That's where we're directing you to take it from." So, it isn't...

Then the last thing I wanted to just add to give people context for a mandated case of an example of that is we've been working on the Ramos response in conjunction with DOJ and OJD. And as we talked, I think about four people saw we had a, excuse me, contract that we've done with Lewis and Clark and Professor Caplin on identifying those.

Now, it's almost 300 cases that have been sent back that were in the direct process. And we have been describing that. So, what is the impact to this biennium? What do we think the cost of it's going to be because of that case? And then what do we project for the next? And we've been working with LFO to give them both of those figures. So, that's an example, a mandated case of is one where we didn't anticipate that we would have that expense, the Supreme Court issue, the ruling, it has this impact. And now we're in the process of quantifying what that impact is for the legislature.

Chair Per Ramfjord: Okay. Are there other questions? Go ahead.

Thomas Christ: Yeah. This is Commissioner Christ again, just to follow up. Is there some risk then if they look at that expense and say, "We can't afford it under current conditions," that they will be indirectly telling us how to represent our clients? What I mean is if they said... We say we want to... This program we think is important for the people that we represent, and we want to go forward with it. And the legislature says, "Yeah, good idea. We can't afford it." They're basically telling us how to defend people.

Lane Borg: Right. And that is why I don't... I mean, there may be discussions or maybe comments people certainly have had. There have been times at which it feels like people in the legislative fiscal office are giving what sounds like really specific. But at the end of the day, I think that's why they're not going to say, "You have to do this, or you have to do this." They're going to give us an amount of money we have to cut.

And this is what I have been mentioning what we need to have as conversations both in July and then into a retreat that we're planning with the commission in August is really what our values and how should we plan for that. Because I think it's important for us to ... Even though as I started saying, we have not been cut yet, that may come. And so, we need to, I think, be prepared for that and anticipate what the values would be so the agency can properly assess and analyze what the impacts of that would be to bring it to the commission to get the commission to sign off on how we would deal with that.

But I also want to point out that... And this is in response to Commissioner Christ to your question is that almost anything in the PSA that we would make a cut to, ultimately there's a way for somebody to appeal that to a judge. That's

contemplated in chapter 151 when the agency was formed. And if a judge orders us to pay that despite the agency's decision, we have to pay that. That is what the obligation is.

At that point, if we have no money, we have to... A crisis, I suppose. If we're literally out of money a crisis is fomented, but that doesn't happen and wouldn't happen until very late in the biennium. And before that, we're going to have a couple of e-board meetings or legislative days and frankly, the legislature. I mean, we didn't have it as a crisis, but almost every single long session since the agency has been in existence, we have gone to the legislature in an early session bill to true up what we project our budget to be. And that's not unique to us. DOC does it, DOJ, all the agencies are doing that.

So, what we would have to do is if we said, "We're not going to fund something or we're not going to pay for something," and then a judge orders us to do that, then we make the expenditure. We document that. And then we go to the legislature and explain that this was mandated by a judicial order. And so, they can pay it or be in default. And I don't think they're going to be in default, so.

Julie Fetsch: Agreed.

Thomas Christ: Well, just one more thing. Bear with me here because I'm suddenly sensitive to this. But in the upcoming negotiations with the legislature, which I anticipate will be fraught and tense. I want to make sure that the agency is clear with the legislature that all they can ultimately do is tell us how much money they're going to give us.

And we do not want, even aside from a judicial order, the legislature picking and choosing which programs they think are deserving of funding because I think that interferes with our obligation to represent the clients as we and the providers see fit. And so, I don't want discussions about doing this cost this much and doing that cost that much and letting them somehow pick and choose among that menu of options. That's a view of one commissioner.

Lane Borg: No, Commissioner Christ, I appreciate that. That certainly is consistent with the message that we have been delivering is that we understand we're living in the real world. We understand that we may very well be dealing with cuts that it's sort of critical to the nature of an independent agency, which was the brilliance of NY, Oregon back in 2001 was commended nationally for moving to an independent public defense agency. That's one of the manifestations of it.

And so, yes, we have been delivering that message consistently that we understand there may be cuts. We understand that they can direct where those cuts are in the bucket, which bucket it's in. But they don't get to say how

ultimately the commission decides as is contemplated under Chapter 151 with recommendations from the agency how that gets implemented, how those cuts are implemented, or those priorities are made.

So, I will say, in those discussions that are valuable not to make them all negative, I think it's important for... And I have been doing the best I can to point out where we spend our money and that's where we have to have a conversation as an agency. But for instance, I don't know that we're going to get away from that. But people should be aware.

We spend approximately \$5.7 million a biennium on discovery. That is money that's essentially a transfer from state money agents to us as a state agency to counties. And there's very little regulation of that. There's no standardization of it. 36 different DAs get to set what the schedule is on that and we pay that. So, I think it's going to be important.

And I'm actually looking forward to, in our retreat in August, having a conversation about this and getting information to the commission to inform you so that you can understand because I am mindful that one of the definitions of politics is an expression of values with money. And it's public money that we're spending. And we need to understand what we choose to spend it on to get the best system possible and the most justice possible as mindful of what Chair Per Ramfjord started with on this moment in history and equity and justice, so.

Chair Per Ramfjord: Thank you. Any other questions on this issue? All right. Hearing none, we will move to an update on contracting. And Eric Deitrick and Heather Pate will be providing that. And I believe Eric, you're gonna start with that.

Eric Deitrick: Yes. Chair Ramfjord, members of the commission. My name is Eric Deitrick, general counsel from OPDS. And a few weeks ago, in May when we had our last meeting, it was contemplated that we would be bringing new 18-month FTE contracts before the commission this month. We're not going to be, instead we're working on six-month extensions with existing contractors. And I'll turn it over to Heather Pate in a second.

But I wanted to provide some context as to just how we got here. In January of 2019, we had the Sixth Amendment Center report. In February of 2019, this commission took a vote and directed the agency to move toward a new contracting model. This past summer, we made a commitment to moving toward a new FTE contracting model. In fall of last year, our staff at our agency was working on getting contract extensions that we developed a new FTE contract.

In January of this past year, January 2020, we announced what those new contracts would look like. And we had a discussion about those contracts. In February, we issued a new RFP. And at the same time, we issued the new RFP, we were just getting into the short session where we knew we had a minor reform bill that was going to be discussed as well as the \$20 million SPA on the table for disbursement and discussion about how that was going to be used and then march it. And session ended without the bill, without the SPA. And COVID pretty much shut down operations for most state agents, the way they would normally conduct their business.

And so, in April, we had those RFP responses. We came back to the commission last month. And when we had a conversation about what those contracts would look like, I mean, a few things were just kind of staring out. And one was the inequity that was going to be built into these contracts. When we moved away from the case credit model, undid the line items that was built into contracts, looked at how many attorneys we were funding per contract, it became clear that there was a pretty wild inequity and how the value of these contracts. And at the same time, we didn't get that SPA money to help rebalance those contracts that we had talked that we would.

During the commission meeting, there were certainly a lot of questions and comments about why those inequities would exist and should we contract with those inequities built into the contracts. I have conversations with agency staff and some commission members after the meeting. And at the same time, we're looking at these contractual inequities where, as Julie and Lane just talked about, there's possible budget cuts coming soon. So, we made the decision to pull back from that, reassess, and offer existing contractors six-month extensions.

Going forward, our intention is to get stakeholder engagement, listen to the community, stick to the notion that we need to have equity in our contracts but also with the understanding that to the extent there are differences. And there should be differences. There used to be objective criteria as to what those differences are. So, that's where we stand with contracting. And with that, I will turn it over to Heather.

Heather Pate:

Good morning. Good morning, Chair Ramfjord, Commissioners. I'm Heather Pate, contracts manager. Just a brief update of where we are today with the contract extensions. The analysts are in the process of reaching out to all contract administrators, discussing the extensions, and getting them executed. We should have this completed by early next week. And that'll give...

Now, we'll have time to really focus on what Eric just discussed, setting up some good... Looking at data and setting up some good baselines and coming up with

recommendations, talking to folks, and moving forward to January of 2021. That's all I've got.

Chair Per Ramfjord: Okay, Heather, this is... Could you talk a little bit more about the process? You and/or Eric talk a little bit more about the process. I think that there was... I agree with everything that you all were just saying. I think there was some concern during the last meeting about continuing with the potential inequities or contracting those in.

But I think there's also been a lot of ongoing concern in the provider community and elsewhere about say, "How are we going to determine what a full-time load is? What are we going to do to do that? What are the kinds of things that you're talking about that need to have some objective criteria for managing any disparities that do exist and things like that?" I just like to get a better sense of what this process is going to be like, I guess, if you can provide that.

Eric Deitrick: Sir, Chair Ramfjord, members of the Commission. This is Eric Deitrick. So, Kimberly McCullough, our legislative director, is already working to pull together a stakeholder group to have a conversation about what those objective criteria should be. So, we know how much money we have. And we know with decent certainty now compared to where we were a year ago how many attorneys were funded.

So, based on that, we know roughly what we can pay for attorney if we were to pay everyone the same. But I think it's fair to say that some contractors have support staff. They have investigators. They have a whole team of...

And it's not just public defender offices. There are other contracting groups that are non-public defender office as well that fund these types of services within their contract. And so, I think it's fair to say that they should probably get a different rate if they're bringing on support staff investigators than someone who has not. I think the stakeholders will probably explore markets, urban, rural, etc., as to whether there should be different rates.

I would expect there to be a discussion about the amount of experience an attorney has and how that factors into how the agency contracts based on an FTE model. And, of course, what percentage of their time they're giving to public defense cases. So, I mean, those are the criteria I see. I think what you're touching on, Chair Ramfjord, is without caseload standards, I don't think we're going to be able to contract with the community in terms of, "This is how many cases you're expected to do."

We're still going to be on the model of, "What percentage of your time are you giving? Are you giving us all of your time? And if you're giving us all of your time

and you meet these objective criteria, this is what we can afford to pay." If you're giving us less of your time and you don't have support staff and you don't have an investigator as a part of your contract team, this is what we can afford to pay." At least that's how I would like to see the conversation going forward.

Chair Per Ramfjord: Okay, that's helpful. I think that the one thing I'm still a little curious about is... I understand that you can [Inaudible 00:30:35], you say, "How many attorneys can we fund? And how should we fund them given that?" But I also think that we still want to try to maintain some level of expectation in terms of what caseloads people are going to be taking and try to get some leveling out of the caseload. Because I do think right now, we have a system in which some providers are definitely taking on more cases.

They've been getting paid more because they're taking on more cases. Some providers are taking on less cases and trying to get to a level where... I mean, the whole idea, the whole notion in part of an FTE model, as I understand it, which is sort of similar to what's going on with a parent-child representation project is that by paying on an FTE model and having caseload expectations, you don't have people... You don't have the potential, at least, of people taking on too many cases to up their compensation.

So, I just think that it is important for us as we go forward to try to keep that in mind and try to figure out ways to encourage and not build into any future contracts that may become a paradigm for the future... Going farther in the future, I should say, a system that doesn't really take into account our need to try to get caseloads managed. So, that's just a comment.

Eric Deitrick: No, Chair Ramfjord, if I can follow up on that. After the last meeting, I received several emails, which I honestly didn't expect, thanking us for discussing the rule of professional conduct regarding conflicts of interest in excessive caseloads. And they were appreciative that we were actually putting that into the contract and acknowledging that as an agency.

And to your point, we're already in talks with our IT folks at OPDS. We are going to move forward with a case reporting requirement, a quarterly case reporting requirement. So, we can keep track aside from how many cases the entity is viewing but per attorney, how many cases the attorneys are opening quarterly, and that will be a new procedure for us to monitor caseloads.

Chair Per Ramfjord: Okay. Do other members of the commission have any questions for Eric Deitrick or Heather Pate on this issue?

Thomas Christ: Yes, this is Commissioner Christ. Can you help me understand this contract extension a little better? We used to pay them per number of cases. Now, we're

just going to keep paying them proportionally the same amount with no requirement that you take any number of cases. Why wouldn't everybody just start turning down assignments? Because many of them, if not most, were taking too many to begin with. Are we going to end up with a lot of cases that we're not going to have attorneys for because the lawyers are not accepting assignments and still getting paid?

Eric Deitrick: Commissioner Christ, I could jump in there for a second. So, it is a bit of a dance as we go through the transition. So, the contract right now looks somewhat similar to the former contracts in that there is a target caseload with the big difference being that we have written and telegraphed to them that if they don't meet that target, they're not going to owe the state money. They're not going to owe the agency money in the way they have in biennium past.

So, there is a target. And we are operating in good faith that the public defense providers will continue to give the time to these cases as they have in the past. I mean, you're correct in identifying a gap, Commissioner Christ, and it didn't come up... Actually, yesterday, Contracts Manager Heather Pate emailed me there were three cases we were scrambling to get coverage for.

So, the flip side to not making people take excessive cases is that with that freedom, they have a little bit more choice. And I think you'll find most providers as during last legislative session when some of the offices shut down are not going to go there, we presume, unless they have to. But I mean, you're right, that is one of the gaps in this transition period. And we've been able to manage it so far. I mean, we're more than five months through this right now, and we haven't had any catastrophes to speak. But it is something that could come up that we have to be ready to address.

Thomas Christ: Me again. You mentioned targets. Are those the same targets as before? Or have you adjusted them downward or fixed them, set them in any way based on something other than the studies we're in the process of doing?

Eric Deitrick: Heather, do you know this?

Heather Pate: So, we just extended the... So, if you recall, we were already in an extension, right? And those came before the commission last November. So, this exercise is just extending those current extensions. And it's a little confusing. But because we didn't get the SPA and because we didn't have any more money to work with right this second and hearing some of the questions from commission, we really need to be able to take a look, a deeper dive at current operations and how things are looking in order to do new contracts.

So, the answer to your question is we aren't changing anything from those extensions that they took on back in November. So, the case guidelines or the cases that are being extended through December 31 of this year.

Thomas Christ: So, it's the same contracts and the same case numbers. But we're just saying on the side that you don't have to reach those numbers to still get paid.

Heather Pate: Yeah.

Thomas Christ: And we're hoping that everybody will deal with that appropriately in good faith. And for those of you who took too many to begin with, you will cut back. And we'll still find someone to handle those cases you're no longer accepting. Is that a fair description?

Heather Pate: Yes. Fair.

Thomas Christ: Thank you.

Chair Per Ramfjord: Okay. Any other questions? Okay. Hearing none, we will then move on to the next item on the agenda, which is Multnomah County Courthouse update from Second Div. Director Borg.

Lane Borg: Thank you, Chair Ramfjord, commission members. Again, for the record, my name is Lane Borg. I'm going to give an overview of how we're looking at the Multnomah County Courthouse. And then Eric's going to give a little more specific update and some photographs of what it's looking like. We do understand that the contractor is moving forward with commissioning of the building and completion of their contract, and that's going to be happening later this month.

We have some dates set next week to go through and look at our space. I'm going to apologize if you're hearing that noise in the background. My condominium believes they can repave concrete with a hair blower. Okay. So, we're going to have... We anticipate in July having the suite available that is in the Multnomah County Courthouse consisting of approximately 14 offices, a conference room, meeting rooms off of the lobby. And we want to occupy it and use it.

What I am anticipating in terms of restarting the agency is that we would be phasing it. We would come in with not going to complete 100% right away whenever that opens up but that we would be utilizing going to 25% or 30%, then up to 50% or 60% on a... And so, it's my intention to utilize the Multnomah County Courthouse space to allow us to restart regular work but have social distancing in safe spaces for people to work.

And so, in that, we now would have, again, about 14 more offices and a conference room in addition to the space we already have to accommodate that. So, that is what I intend to use the space for in August, September. I'm going to turn this over to Eric to let him talk about what exactly is going on with it.

Eric Deitrick: Sure. Chair Ramfjord, Vice chair Welch, members of the commission. This is Eric Deitrick, General Counsel at OPDS. I seem to think it's been a while since we've talked about the courthouse, so I just did want to, for some of the newer members, clarify how this came to be. Courthouses around the state are not in good shape. Some of them are in very bad shape. And they are owned by the counties. And it has become problematic for counties to raise funds to build new courthouses.

So, the state passed a bonding measure a few years back where they agreed to pay 25% of the cost of building new courthouses. Counties have to get in the queue to get on the radar for these new projects. But the state agrees to pay 25%. And if the county agrees to relocate or co-locate in existing state agency within the courthouse, that funding increases to 50%. And OPDS was selected to be the colocation agency for the new courthouse.

It's opening pretty much within five weeks. It's very exciting. When I came to the agency, Nancy [Inaudible 00:42:20] had spent a lot of time at the beginning of this project and lifting this project, I think, from the ground. And it's exciting to be here as we get closer to opening day. The courthouse will be 17 stories tall. Our space, the Office of Public Defense Services space will serve as a public defense resource center. It's 5,000 square feet. It's on the 7th floor. It's within one floor of the presiding courtroom for the courthouse. The space will have a reception area that'll see over 30 people. It'll contain within the existence reception area 8 rooms for attorneys and clients to meet privately.

There will be a second... Behind that open reception area, that is where there will be OPDS space. And there's a large conference room in that space that can be divided up into three smaller conferences. There are 14 offices in the space that we can use for OPDS staff to work from or telework from. All of the audio-visual equipment has been installed. Laura Al Omrani from her office have signed off on that. Next Wednesday is the final sign-off on the space for the agency. We will be doing a walkthrough next Wednesday, making sure the furniture is correct, that the outlets that are in the right places, and give the final sign off to the space.

There will be a small opening ceremony. In recent meetings with the county and the state, giving what's going on with COVID and other issues, I expect the

opening ceremony to be much smaller than was initially anticipated. But we still are planning on opening the courthouse July 18th. The only issues that really remain for the agency right now are that final walkthrough, which we will do next week. And then there is the issue of getting security cards to the building. That's kind of the final outstanding measure working with the Multnomah County Sheriff's Office to get us identification cards to go in and out of the space. But it is set to open within five weeks. It's very exciting.

And we have some photos on the livestream right now. Kaysea, if you want to share any of those, they're available in the packet as well. But I think you can really get a good sense as to what it looks like. The initial entryway, I'm not an architectural person by any means, but I think it's fair to say that the entryway is fairly striking and bold. It's going to be a really neat space. Our space for whatever reason is not included in these photos. So, I apologize for that. But you really can see the progress that has been made over the last four years in the construction of this building.

I'm hopeful that we can have a commission meeting in the new courthouse this fall, so everyone can kind of get to see the OPDS space and take a look at the new building. That's really all I have, unless you any of the commissioners have any questions. Oh, actually, there is one last piece. We do and we are in the process... We are going to hire a limited duration position to staff the space. So, when I'm talking about outstanding matters for the agency, there is getting the ID cards, the final walkthrough. And then we are going to have to hire someone to staff the reception area and keep track of that space.

Lane Borg:

And commissioners and chair, just the thing I would add to that is that it's been a while since we have talked about this. But one of the reasons and justifications for why we do need to have somebody up there kind of managing the suite on a day to day basis is that a selling point for us having that space within the courthouse was to have a place that our clients and witnesses could be directed to and not be intermixing with sheriff staff and with other... Maybe ended up at the district attorney's office or something like that. So, the idea downstairs is if somebody at the information desk asks for any association with a defense case, they can be sent directly to that suite and then they'll be given information.

And also the little meeting rooms, actually not so little meeting rooms, they're nice size, off of the reception area will allow contractors and their clients to confer privately because, up to date, people have been meeting their clients and witnesses and hallways and having discussions right outside of courtrooms. And so, the hope is that there'll be a place that they can review offers, review evidence, have a conversation that is much more confidential and separated from state's witnesses, police, and other courthouse employees.

Chair Per Ramfjord: Thank you. Does anyone have questions for Commissioner Borg or Mr. Deitrick on this issue? Okay. Hearing none, on the schedule here, we have a five-minute break right now. So, we're going to take that right around 11:00. It's a little bit before that, but I think we might as well go ahead with that. So, why don't we say that we will get together again at 10:55. That's 5 minutes till 11 o'clock. We'll start again at that point in time. All right. Thank you, everyone.

Okay, I'm pretty much ready whenever everybody else is to get started again.

Woman: Yes, sir

Chair Per Ramfjord: All right. Thank you, everyone. We're going to move on to the next item on the agenda, which is an update on DHS visitation policy. And Keren Farkas and Kimberly McCullough are going to give us that update now. Go ahead.

Kimberly McCullough: Great. Thank you. This is Kimberly McCullough. I am the Legislative Director here at OPDS. And I'm going to start us off and then Keren will continue. So, just a little bit of framing here. As an agency, we've been working to improve our stakeholder engagement and also our collaboration with other agencies.

And COVID has provided us with a number of challenges, but we've also been viewing those challenges as opportunities to work with our system partners to navigate the issues that come up. So, Keren is going to provide more detail. But to give you a broad overview, the issue of visitation and dependency cases is an example of this collaborative work we've been doing and that we want to share with you.

So, as I'm sure you all know, visitation is incredibly important in dependency cases. When families have been separated, visitation is crucial to the goal of reuniting families. And it's also important for the wellbeing of children and their parents. COVID makes all of this much harder, as I'm sure you can imagine with social distancing and all of the requirements around making sure that folks are safe and reducing the risk of transmitting the disease. We were hearing a lot of stories from public defense providers across the state about challenges for obtaining visitation and also inconsistent standards around the state for when that visitation can happen.

So, we reached out to DHS, provided them with information, requested some collaboration. They pulled together a work group for us. And we're so grateful for their partnership and also the partnership with the public defense providers that participated in a juvenile workgroup that Keren pulled together that helped inform our conversations with DHS. And I just like to give a shout out also to... She's the Deputy Director of Child Welfare at DHS, Lacey. Keren, I'm forgetting what her last name is. I should have written it down.

Keren Farkas: Lacey Andresen.

Kimberly McCullough: Lacey Andresen, she's the one who facilitated the DHS workgroup. She is amazing.

Keren Farkas: Jennifer Holman facilitated. Yes.

Kimberly McCullough: Holman. Jennifer Holman facilitated, excuse me. She does an amazing job. I just think that there's some really great folks over there at DHS that we were able to work with. And Keren, I'm going to turn it over to you to talk a bit more about what we actually did.

Keren Farkas: Sure. Thank you, Kimberly. Chair Ramfjord, members of the commission. For the record, my name is Keren Farkas. And I am the PCRP and juvenile manager at OPDS. So, part of the PCRP model is really working towards these kinds of system improvement and collaboration with stakeholders. And as Kimberly already gave an overview of, the pandemic has had some clear and direct impacts on families affected by the child welfare system and has really required stakeholders to come together to be responsive. And one of the real impacts was the significant reduction in access to in-person visitation for parents and children.

So, just to add a little more detail to Kimberly's overview, OPDS has been convening a weekly juvenile practitioner workgroup to talk about the challenges that COVID has had on practice, from everything, from court access to client access to services. And visitation has been a significant point of conversation. OPDS contractor, Youth Rights and Justice, sent a letter to DHS outlining these concerns very early on in the pandemic and was starting to engage the conversation.

OPDS then largely informed by this. This workgroup sent a letter sharing the concerns and request to collaborate on system impacts. And as Kimberly said, DHS did agree to convene a stakeholder group that involved our office, court-appointed special advocates, foster parents, parent members, Amy Miller from Youth Rights and Justice, and DHS caseworkers.

And it was really a great collaborative effort. And last week, they did issue updated guidance that calls out in-person visitation as essential. And just for some background, what the state had largely been doing and they did work to get this out quickly is offer virtual visitation for parents where in-person visitation when they felt it was not possible. The barriers were really the concern of the difference of virtual visitation to in-person visitation. So, this was an effort to get the in-person visitation to happen safely.

So, as I said, the guidance called out in-person visitation as essential. It creates an expectation that in-person visitation can happen and also a mechanism and planning protocol where involved stakeholders have objections that need to be addressed. It relied on a risk mitigation framework knowing that there is a risk and likely trauma of lack of face-to-face contact between parents and children and also a risk of COVID exposure. And those two things need to be considered and balanced. And it lays out of safety protocol that will be expected of all parties at all stages of the visitation process from transport to getting inside the building.

And we know there'll be implementation barriers that will probably be different across the state based on reopening plans and PPE access and other, but we'll continue to work with agencies at the state level to troubleshoot. And we just wanted to share this example of the kinds of systemic improvement that OPDS hopes to be engaged in and that we're able to do when we have the collaboration with practitioners and relationship with agency stakeholders. Thank you.

Chair Per Ramfjord: Thank you. It's very encouraging to hear. Really a good story. So, do other commissioners have any questions on this topic? Okay, thank you for the update. Really appreciate that. Very good. Okay. So, the next item on the agenda is, as I believe, the contracts for approval of the PCRPP contracts and that again is Keren Farkas and then Billy Strehlow is going to be on for this as well, as I understand it.

Keren Farkas: Yes. Thank you again, commission members. I'm Keren Farkas again, PCRPP and juvenile manager. I'm just pulling up my notes one second. So, on the agenda today, we are requesting approval of contracts to roll out the parent-child representation program in Multnomah County. And I'll very briefly talk about the parent child representation program.

It is a model of interdisciplinary representation for parents and children in juvenile proceedings where the tenants are capping caseloads at 80 to allow for manageable caseload that will allow attorneys to have time to do the investment in client contact and court preparation. It also has access to case managers to collaborate with attorneys for parents and children because access to social work case managers has been shown to really improve client engagement and outcomes. And it also includes oversight, reporting with OPDS to ensure that the support and the outcomes are happening as we hope they will.

So, last year, we got funding from the legislature to roll this out. We have been working hard as an agency and with our partners to do so. Over the last year,

during the executive session two weeks ago and as outlined in the commission materials provided for today's meeting, we discussed the models and thought process behind the contracts that we are proposing.

Just as a broad explanation, we're proposing seven contracts with attorney providers that will bring in total 35 full time equivalent PCRPs attorneys to Multnomah. We have one outstanding offer that we hope will bring up the FTE a little bit. We have ten contracts for PCRPs case managers, seven of which will be independent case managers as they currently are in the five counties where PCRPs is implemented. And three of which will be with the public defender organizations, who will each be getting funds to hire one to two in-house case managers to create interdisciplinary representation teams.

As we have discussed, there are features of rolling out PCRPs in Multnomah County that haven't existed in the prior counties. So, we anticipate learning a lot in this initial period and throughout the 18-month term and being responsive to ensure that the PCRPs model is implemented with integrity to its features, including working with those attorneys that have higher caseloads than 80 to work on lowering them. And if we see them going in the wrong direction or staying static, we will work to build capacity to get those caseloads to 80.

We are also cognizant that the pandemic has had its own impact on caseloads because of court access challenges where that have kept cases from moving forward or resolving because of restrictions in proceedings that have been able to happen in the courthouse. So, we're keeping all of those things in mind. We hope this will be a success, and we're happy to answer any questions.

Chair Per Ramfjord: Okay, great. I appreciate that update. I will say that... No, I want to make sure before we have a vote on this issue that we both get any comments from other commissioners. But also, I want to remind folks that they can ask or members of the public that want to comment on this that they can use that question and answer section on the right side of the viewing screen to pose any questions there. And we'll sort through those to see if we can't get Keren or Billy to answer those questions.

But before we get to that and while that's going on, do other members of the commission have any questions? Okay. I don't hear any. I'll give it just a minute or so here for people, members of the public if they have any questions to pose those before we move on.

Lisa Ludwig: I have a question. This is Lisa Ludwig.

Chair Per Ramfjord: Go ahead, Lisa.

Lisa Ludwig: Keren, you may have already said this. But can you tell us if the contracts that you're making including the one that's kind of in progress are going to cover all of the juvenile case needs in Multnomah County? Or are there still going to be some cases that are kind of left out of the new PCRPP scheme?

Keren Farkas: Thank you, Commissioner Ludwig. If I could ask you to clarify, do you mean by categories of juvenile cases or amount of juvenile cases? Are you asking if like, for instance, emancipation will be covered? Or are you asking if we are contracting for the full amount of pending cases?

Lisa Ludwig: The latter.

Keren Farkas: So, the categories?

Lisa Ludwig: Yes. No, no. I want to know if you're contracting for the full amount of cases.

Keren Farkas: So, yes, based on the... So, what we did was we got... To the best of our ability, we got an idea of the pending open cases of our contractors when we figured out how to distribute the contracts. And based on what we received, we didn't put the... We believe we have enough within the contract terms of a 15% variance on the 80-caseload to match the current caseload.

So, meaning not everyone is going to start at 80. And some people are going to start closer to 80 and some people are going to start closer to 110. But in total, we think with the added capacity, the flexibility, which we don't plan on relying on long term but for short term, the flexibility of the 15% over or under 80, we think we can manage the current caseload. But we'll look to... Obviously, our target is to have capacity at 80, not to stay static at 95. So, does that answer your question?

Lisa Ludwig: I think so. Yes.

Keren Farkas: Yeah.

Lisa Ludwig: Thanks.

Keren Farkas: Thank you.

Chair Per Ramfjord: Okay. There were a couple of comments that came in while you were answering that question. And I believe that Kaysea has published those. So, can you see those Keren?

Keren Farkas: Yes.

Chair Per Ramfjord: One had to do with how cases are going to be allocated. And the other was how we're going to get cases up to the desired level for people. I think there seems to be more concerned here about actually getting cases to providers than providers having too many cases.

Keren Farkas: So, I think Billy...

Kimberly McCullough: Keren, can you read the questions out loud really quickly?

Keren Farkas: Sure, sure. So, the first question that we're going to try to address is how has OPDS decided PCRCP cases will be distributed to providers (at prelims, box appointments, etc.,)? And I was going to say I think Billy might be better suited to answer that question. He has been doing the pickup schedule for Multnomah juvenile. We're currently in the process of trying to figure that out for the beginning of this intake period. So, Billy, do you want to talk about that?

Billy Strehlow: Yeah, I don't anticipate a significant change in the way that is going forward other than now we're going to limit the caseload, right, to 80 open cases or this 15% range on either side of that. Obviously, it'll be a little messy the first few months as we anticipate, and that happens in every county where we roll out PCRCP where we're trying to bring caseloads down, that takes some time. And we want to make sure we're doing that well. And we'll work with the courts to accomplish this as well.

So, I don't know that we'll necessarily see really much difference in how that is. We'll send out a... We'll look at that next week. Turn our attention to that and get that schedule out, so everyone can have an idea what the next several months will look like for them.

Keren Farkas: Thank you, Billy. If there aren't any questions from the commission. To follow up on that question, I'll move to the second public question. Okay, I'll read that out loud.

Chair Per Ramfjord: Yeah. Go ahead, Keren.

Keren Farkas: So, thank you. For contractors who are currently under 80 cases for an FTE, what is the plan to ensure that they get to 80? For contractors who are over 80 cases per FTE, what is the plan to distribute their excess cases? So, obviously, these are different situations. On all of these, we're going to work individually with contractors because how we will go about this will be dependent on if these are new...

Let's say it's a contractor that has over 80. But let's say those cases are new cases versus old cases or the complexity of the cases. Those will all factor into

whether it makes sense to distribute those excess cases or instead just to not put them on pickup for some period of time to allow for those caseloads to go down naturally as they resolve. For attorneys who are less than 80, those will be the attorneys that we're relying on to front load the pickup schedule.

So, it's hard to answer the question in full generality because it will be very case specific. What I can say is that Billy and I are going to be available to contractors to troubleshoot this. We are anticipating that there will be a lot of back and forth in the beginning. And we want to be responsive to that. We know that these are going to be things. And it's the sort of thing where we will learn so much very quickly that we can't necessarily anticipate, but we want to learn it and we'll try to fix it.

Chair Per Ramfjord: Okay, thank you. Any other questions or comments from commission members? Okay, hearing none. This is an action item for us. So, is there a motion to approve the PCRCP contracts for Multnomah County? I'm actually pretty happy that we're continuing to move forward in additional counties.

And to me, this is a really... Moving into the biggest county in the state is a real accomplishment. I'm very happy that that's happening. This has been a very difficult time for the agency and for all of us in terms of not making as much progress in some areas as we might like. But making progress here is really a good thing. So, is there a motion to approve the contracts?

Elizabeth Welch: I would like [Inaudible 01:14:45].

Lisa Ludwig: Second.

Chair Per Ramfjord: Okay, Any further discussion? All in favor? Go ahead.

Elizabeth Welch: Chair? I'm listening to all of this. And this is like a really big wonderful moment for the children of Oregon, for the families of Oregon. I don't want to go on and on. It's a great moment. And I want to compliment all the people for all their hard work and bringing it what at one time appeared to be almost impossible task. Thank you. I'm sorry.

Chair Per Ramfjord: No, I think your comments are entirely appropriate. I agree with them completely. So, I think we had both a motion and a second. So, all those in favor?

Together: Aye.

Chair Per Ramfjord: Any opposed? All right, the motion passes. Thank you very much. So, with that, we will go on to the next item on the agenda which is approval of the non-

contract attorney rates. And I believe that Executive Director Borg is going to discuss that.

Lane Borg: Thank you, Chair and members of the commission. To give you a context on this action item. Historically, some of us are old enough to remember when the presumptive rate for attorney fees was, I think, as low as \$35, went to 45. We've had it at \$55 an hour for a little over a year and a half now, but we had anticipated a fairly significant adjustment if we'd gotten the SPA.

But when we didn't get that, I did not want to let the moment go by to at least address this in some fashion because the reality is... And this is for attorneys that are not under contract, so it's not the death penalty contract attorneys and it's not the providers either in consortia or nonprofits. This is the rate we would pay if somebody is appointed or somebody agrees to take on some work, the base rate that we have. And already there's been some variants on that.

But I didn't want to let this go by in response to the Sixth Amendment Center report about how deficient, even the \$55 an hour was, and to try to make some headway. And we looked at what we thought we could afford within the current budget projections for the rest of the year, the last half of the biennium. And we are bringing forward a request that the omission approve raising that base rate from \$55 an hour to \$75 an hour and to approve that. And I'm happy to answer your questions.

Chair Per Ramfjord: Yeah. Just a couple of quick questions. I guess, one is, have you experienced difficulty getting people at the lower rate? Two is... I don't have really have a good sense of what portion of the budget this is or how much money... What the financial impact of this actually is.

Lane Borg: So, thank you, Chair Ramfjord. The number of people doing the percentage is relatively low. I think historically in the last several years, it's been 3, maybe a little bit more than 3% of our cases are actually done by people on non-contract hourly rate. But what we have noticed is that there's quite a bit of variability on, historically, whether the people have asked or whether they're coming in and getting some higher rate. So, there's been a little bit at 55. Some had been at 75. Some have been at 100. The rate we pay for death penalty lawyers right now is we pay them \$105 an hour.

And so, we felt that when making the projections... And I can't give you an exact hard dollar amount, but in looking at the projections of what we believed would be available given the amount cases that we could, we have a good faith belief that we can afford this, that this itself won't create an ask to the legislature but also would better level where people are at that take a small percentage of assigned cases.

Chair Per Ramfjord: Okay. Do other commissioners have any questions? And again, since we are taking a vote on this if there are any public comments or questions on it, I'd invite people to use the Q&A section to ask that. But if there are, first of all, any commissioner comments on this issue, please go ahead.

Lisa Ludwig: This is Lisa Ludwig. Oh, sorry. Am I talking over someone?

Thomas Christ: No, go ahead.

Chair Per Ramfjord: Go ahead.

Lisa Ludwig: I think this is a really good idea because it improves consistency. There are some lawyers across the state who might just accept that the rate is the rate and that's what they're getting and other lawyers who know to ask for a higher rate. And so, this is appropriate to adjust that. And so, I support it. But that being said, because it could possibly affect me, I'm going to abstain from voting on this particular issue.

Thomas Christ: This is Commissioner Christ. In light of the earlier discussions about impending budget reductions, I assume there's some risk that we might have to take this rate back in the near future. I don't know that that's a reason not to support it now. I feel bad about the possibility that we give something, and then we take it back a short while later

Lane Borg: So, Chair, if I can comment on that. Thank you, Commissioner Christ, for that comment. I want to say here, and this is perhaps tipping my hand in terms of what I believe we should be discussing when I alluded earlier to having conversations that out of, hopefully, that retreat in August about our values. I really hope that we don't, in fact, go have to roll that back.

Because while we will be facing cuts, it is important to me, it's important to me as somebody who's worked in public defense for over 30 years that we have to change the conversation because we are a responsive service within public safety. So, we don't set our caseloads. The district attorneys file the cases. The courts run the courts, and we are responsive that way.

But every other agency that will be dealing with anticipated cuts will have the option of doing less. If district attorney's offices are cut, they file fewer cases. If police officers are cut, they arrest fewer people; they issue fewer citations. And there has been a presumption in the past that we just have to suck it up and do whatever is out there no matter what they give us. And I think this is why I think we have to have a conversation about where are we doing less. So, that's not really answered in here.

But I wanted to say that because I really hope we do not have to do what you're saying that the solution is not to just lower the rates on them but rather start saying, "There are things that we cannot continue to do." Like in the Barrack years, maybe it would be that methodology, maybe it wouldn't. But that there are things that we cannot continue to do because they are so underfunded that it's not providing a constitutionally adequate service.

Now, I'm not saying \$75 an hour is, in my opinion, the absolute right amount. It's better than \$55. But I hope we aren't having to come back and roll that back. But that's going to be a commission decision. But we really have to be talking about what we can't do because they cut funding.

Chair Per Ramfjord: Any further comments or questions from other commissioners? Okay. There does not appear to be any public questions about this issue. So, I think we're ready for a motion if there is motion on this issue.

Elizabeth Welch: I move the approval.

Thomas Christ: This is Commissioner Christ, I move the adoption recommended rate.

Chair Per Ramfjord: Okay. We have two motions. We just need a second.

Mark Hardin: I second.

Chair Per Ramfjord: All right. That was Commissioner Hardin?

Mark Hardin: Yes, correct.

Chair Per Ramfjord: All right. Any further discussion? All right. All those in favor? Aye.

Together: Aye.

Chair Per Ramfjord: Any opposed? All right, motion carries. Thank you very much. So, we are onto the next item, which is the OPDS staff update. And so, we'll start with Mr. Lannet.

Ernest Lannet: Chair Ramfjord, members of the Commission, hello, is Ernie Lannet, Chief Defender with the Criminal Appellate section. Well, want to point out that we did have our first staff meeting, the AD staff meeting yesterday. And we encountered some few technical difficulties since we were doing it all remotely or through this kind of format. But it was good, and it was good to resume those.

The other thing is mostly I just want to give you a follow up on the cases that fall under The Ramos case. Last week, the Oregon Supreme Court did issue two written opinions, and did so without any additional briefing actually. It was just on the petitions for review. And in both those cases, the state had filed the notices that I was talking about last time where they basically admitted that plain error had occurred. And it's the type of plain error that would require a retrial but wasn't taking a position about whether the court should exercise its discretion to do so.

In those two opinions, the court went through Ramos and went through what happened in the case. They said notwithstanding that this issue wasn't preserved at the trial court with the kind of way that we would expect it when the case was actually out that they were going to address it and they were going to send it back. So, along with that, they sent back another 20 cases more on just issuing an order, allowing review, and sending it back in light of Ramos. So, that sent back about 22 cases so far.

The Court of Appeals, I think this is going to kind of... When I talked about kind of like there was a log jam of cases, I think this is kind of the first break in that log jam. And we're going to see a number of cases reverse next week. The briefing in the Supreme Court cases I kind of outlined last time is continuing. Those will be argued in August. So, hopefully, we'll have a decision. I would expect that the court would be trying to accelerate answers in those cases. So, I'm hoping that we'll get an answer about that as soon as maybe November and maybe before then. So, we'll see. But unless you had other questions, that was pretty much my update on the criminal appellate section.

Chair Per Ramfjord: Okay. Do any commission members have any questions? Okay, thank you.

Ernest Lannet: Thank you.

Chair Per Ramfjord: Thank you for that update. All right, moving on. Are there other members of the staff who are going to provide an update at this meeting?

Lane Borg: Chair, in lieu of Wendy Heckman... Just to give a quick... Because I know this has been out in the community and people have seen that. There were some positions that were identified, that were funded essentially, by the e-board in April. And so, we've been moving to fill those and to stabilize the contract services.

That actually allowed us an opening in AD because Deputy General Counsel Erica Herb is now... That position's been made permanent and she's in the General Counsel's Office. So, we'll be ready placing her position in AD. And we also had an attorney who's left for a world cruise and tour. She and her husband

are going to be sailing around the world. So, she's leaving. That's Sarah Laidlaw. And so, we will be replacing those positions and are in the process of doing that.

There were a few positions that we had been told by the legislature they wanted to fill. They ultimately did fill them with the... Or authorized them to the e-board, and we're in the process of filling those right now. So, that's what the new positions that people saw posted were about. It's still within the nine positions that we had either existing or unfilled and opened up the agency that the e-board stabilizes with. Yeah, I think that's it.

Chair Per Ramfjord: Okay. All right. Thank you. Anything else from anybody else? Okay. So, anybody else have any other public comments or any other questions from people that they want to raise at this point in time? Sure, go ahead.

Lane Borg: Chair, and again, Lane Borg, Executive Director. There was a question earlier in the comment area asking about death penalty contracts. And a quick update, and this has been discussed and communicated with the death penalty community right now.

We have been transitioning the people who just had a few cases, even in the extension period of the beginning of 2020. We've been moving to pay-as-you-go rather than being a set contract. And essentially, we're continuing to move people into a pay-as-you-go. We're still paying \$105 an hour as we paid before, but they would just submit their monthly bills and we would pay those.

We are adjusting that, the number of death penalty contracts we have, because to date since the enactment of Senate Bill 1013, there have... It went into effect in October. There was a fact situation in September in Yamhill County that got indicted in October but that's the last death penalty case that we've had indicted in Oregon. We have not had a new case since last October when essentially the bill was enacted or was in place. So, we are reassessing that.

I am continuing to fund or to staff resource murder in the first degree with a death-penalty-qualified lawyer and a mitigator. Because we still do not have an appellate decision on the constitutionality of the bifurcated sentencing issue that they face even though it's not death, it's life without parole.

And so, until there is a appellate decision on that, it's my intention to not staff them as a death penalty case because it is different but to staff them with a death-penalty-qualified lawyer because I think a lot of the same issues about bifurcation, about whether a judge can make a factual finding or what the jury's role is in that and the constitutionality of life without parole under that scheme.

So, that said, we are seeing a dramatic reduction in the amount of death penalty work out there. Maybe that's not great news for those that have invested in that as their career. But it really is a good thing that we can see that 1013 has had a significant impact on the state.

Chair Per Ramfjord: All right, thank you. I think it's a great thing as well. I think it's a really wonderful thing. And it may not be, you say, best thing for our providers, but I think that who we really serve are the people, the state. And I think it's a wonderful thing for the people to state. So, any further comments from anyone? Any further questions? Okay. Hearing none, do I have a motion to adjourn the meeting for today? Because I think that was the end of the agenda. Motion adjourned?

Lisa Ludwig: Motion to adjourn.

Chair Per Ramfjord: All right. Second?

Together: Second.

Chair Per Ramfjord: All right. All in favor?

Together: Aye.

Chair Per Ramfjord: Any opposed? All right. Thank you very much, everybody. I know this is an awkward format. But I think we got some good work done here. And I was very, very glad about the PCRCP contract expansion. That was a wonderful thing. And so, we will just move on. And we will see you all at the next meeting. Thank you very much.

Lane Borg: Thank you.

Lisa Ludwig: Thank you.

Attachment 2



Oregon

Office of Public Defense Services

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Date: June 18, 2020

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

From: Heather Pate, Contracts Manager
Shelley Dillion, Contract Analyst
Nikita Gillis, Contract Analyst
Amy Jackson, Contract Analyst
Caroline Meyers, Contract Analyst
Billy Strehlow, Contract Analyst

RE: Public Defense Contract Extensions – July 1, 2020-December 31, 2020

Proposed Motion: Move to approve Public Defense Contract Extensions for the term July 1, 2020 – December 31, 2020.

The Commission directed OPDS in February 2019 to contract in a manner other than the credit model going forward. The 2019 legislature had set aside funds to help the agency achieve a more balanced system and address disparities, but since that time the state has been impacted negatively by COVID-19 and the added funds are not currently available. Due to the uncertain times the agency is requesting a 6-month extension of current contracts.

Public Defense Contract Extensions recommended for Approval by the Public Defense Services Commission at its June 25, 2020 Meeting:

County	Proposed Contractor	Value
Baker	Eagle Cap Defenders	\$59,138
Benton	Benton County Legal Defense Corporation	\$632,980
Clackamas	Juvenile Advocates of Clackamas	\$1,114,274
	Clackamas Indigent Defense Corporation	\$1,933,655
Clatsop	Mary Ann Murck	\$105,235
	Clatsop County Defenders	\$443,094
	Macon Benoit	\$52,618
	Stacy Rodriguez	\$33,000
Columbia	Justice Alliance of Columbia County	\$152,536
	Columbia Indigent Defense Corporation	\$240,622
Coos	Coos Criminal Consortium	\$157,500
	Southwestern Oregon Public Defender Service	\$675,000
Crook	Twenty-Second Circuit Defenders CRO	\$575,366

Curry	Curry County Public Defense LLC	\$315,000
Deschutes	Deschutes Defenders	\$1,739,934
	Bend Attorney Group	\$926,919
	Kollie Law Group, PC	\$479,941
Douglas	Roseburg Defense Consortium	\$443,652
	Umpqua Valley Public Defender	\$1,210,470
	Arneson and Stewart, PC	\$358,050
Gilliam/Hood River/ Sherman/Wasco Wheeler	Morris and Sullivan	\$818,450
	7 th District Consortium	\$437,847
Grant/Harney	Robert Raschio	\$294,922
	John Lamborn	\$199,269
Jackson	Los Abogados	\$583,286
	Jackson Juvenile Consortium	\$714,000
	Rogue Valley Defenders, Inc.	\$529,200
	Southern Oregon Public Defenders JAC	\$1,948,186
Jefferson	Twenty-Second Circuit Defenders JEF	\$510,231
Josephine	Southern Oregon Public Defenders JOS	\$757,647
	Josephine County Defense Lawyers	\$787,500
Klamath/Lake	Klamath Defender Services, Inc.	\$1,935,940
Lane	Public Defender Services of Lane County	\$2,375,924
	Lane Juvenile Lawyers Association	\$1,722,121
	Lane County Defense Consortium	\$521,955
Lincoln	Oregon Coast Defenders	\$1,013,746
Linn	Linn Defenders Inc.	\$1,285,491
Malheur	Doug Rock	\$114,713
	David R. Carlson	\$168,657
	Stunz Fonda Kiyuna & Horton, LLP	\$342,828
	Stoddard & Dennison	\$159,000
Marion	Public Defender of Marion County	\$1,213,324
	Juvenile Advocacy Consortium	\$1,466,974
	Marion County Association of Defenders, Ltd.	\$1,991,267
Multnomah	Multnomah Defenders, Inc.	\$4,414,399
	Metropolitan Public Defender Services, Inc. MCR	\$776,570
	Portland Defense Consortium	\$1,197,725
Polk	Polk County Conflict Consortium	\$380,079
	Vidrio Park & Jarvis, LLC	\$478,277
Statewide	OPC Inc	\$907,717
	O'Conner & Weber	\$442,940
	Harris Matarazzo	\$126,989

	Youth, Rights & Justice	\$308,000
Tillamook	Tillamook County Defense Consortium	\$275,657
Umatilla/Morrow	Blue Mountain Defenders	\$534,067
	Intermountain Defenders, Inc	\$906,030
Union/Wallowa	Grande Ronde Defenders	\$363,724
Washington	Ridehalgh & Associates, LLC	\$509,920
	Metropolitan Public Defender Services, Inc. WSH	\$3,163,379
	Oregon Defense Attorney Consortium, Inc	\$1,255,342
	Karpstein & Verhulst	\$529,441
	Hillsboro Law Group, PC	\$340,368

Capital Contracts

Contractor	Value
Jeffery Ellis	\$109,673
Katherine O. Berger	\$97,073
Richard L. Wolf, PC	\$97,073