



Oregon

Office of Public Defense Services

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April 23, 2020

To: Oregon Public Defense Providers

From: Kimberly McCullough, Legislative Director of OPDS

Re: E-Board Hearing 4/23/2020 and LFO Recommendation Regarding PDSC SPA

Public defense providers,

The Legislative Emergency Board (E-Board) held a hearing this morning, at which they voted to release of a portion of the \$20 million Special Purpose Appropriation (SPA) authorized by HB 5050 (2019). While we had been anticipating this hearing to occur in May, we received notice this week that the E-Board would be holding a special hearing on an expedited basis to address several pressing needs related to COVID-19.

As we reported at our commission meeting last week and in our weekly provider calls, we have been aggressively advocating for a full release of the SPA, in order to address the constitutional deficiencies in our public defense system. For your reference, a letter we sent to the governor and legislators who are key decisionmakers related to budget issues is attached to this email. It outlines our view that public defense in Oregon requires urgent action to meet our constitutional obligations under the Sixth Amendment, and that COVID-19 has heightened the need to support our public defense service providers, as they continue to provide front-line support for vulnerable Oregonians in increasingly challenging circumstances.

At the same time, we are deeply aware that Oregon's economic situation is dire. We have been hearing predictions that the state is facing several billions of dollars of shortfall for the next biennium and that all state agencies are potentially facing 20-25% budget cuts for the next biennium. All executive branch agencies have already been directed to halt implementation of any policy changes that have budgetary impact. Because of this, the E-Board is extremely hesitant to spend money, particularly funding that rolls up into agency budgets.

Because of these serious budget considerations, the Legislative Fiscal Office (LFO) recommended to the E-Board that the PDSC receive one-time funding of \$3,875,965 from the SPA. This recommendation was adopted by the E-Board. It includes:

- \$1,589,702 to fund nine positions that were administratively established by our agency. This funding will not increase the number of individuals on staff at OPDS. Instead, these are individuals who are already working at our agency as limited duration staff, and who are meeting crucial needs of the agency. In particular, the majority these staff are working on accounts payable and non-routine expenses. These staff are essential for getting payments to providers out the door. This allocation of funding will simply cover the cost of keeping these individuals on our staff until July of next year. In order to keep these positions on staff past July of 2021, we will need legislative approval. Note that our original SPA request also

included 14 new positions which we hoped to hire with SPA funding, but LFO is not recommending that those positions be funded at this time.

- \$1,267,848 for contract information technology services from the Oregon Judicial Department (OJD). This funding is crucial to our ability to continue our work on a new case management and data collection system. This item was not included in our request for the SPA. However, LFO has indicated that because this is one-time funding that will help our agency move forward with ongoing system improvements, it is appropriate to include in the SPA funding. It is our understanding that this funding is also meant to replace funding from another \$2 million SPA that was earmarked for this IT project. Because the project is being funded in this SPA, that \$2 million SPA funding will be reabsorbed into the general fund.
- \$868,415 to increase provider rates for interpreters and investigators. This is not the full amount we had requested in our SPA but would allow for an increase in interpreter rates to match OJD's new rate, along with a meaningful rate increase for investigators. We understand that this funding is being recommended because it is a relatively small line-item that addresses pressing needs. In particular, interpreter rates have already been increased by OJD, and without a corresponding increase in our rates, our providers will face great difficulties finding interpreters willing to work for our lower rates. Specific rate increases will, of course, need to be approved by the PDSC, but LFO is recommending that this funding be made available for that purpose.
- \$150,000 on a one-time basis to provide training for juvenile dependency attorneys participating in the Parent Child Representation Program (PCRP). This funding was not included in our SPA request. However, it was a separate item that we had asked to be funded during the short session and was approved and included as a separate item in the short session budget bill. Because of the way session ended, that bill did not pass, and the funding was lost. LFO has recommended that it now be included in the SPA allocation because it is one-time funding that is crucial to the success of the PCRP program. They will anticipate us coming back to ask for funding to continue to support training for juvenile dependency attorneys next legislative session.

Absent from LFO's recommendation is funding to increase compensation for public defense attorneys or to add attorneys to the public defense workforce. As you will note in our letter to the governor, this is something we strongly advocated for. However, because of the significant roll-up costs this funding would create, and because the legislature is bracing itself for budget cuts, LFO is not recommending these increases at this time.

We understand that this will be disappointing to the public defense community. We share that disappointment, as we have been working for several years to push for reform and increased funding that is needed to reduce caseloads and pay for necessary overhead and support staff. We were so close to significant funding increases in the middle of last legislative session, with productive reform work close on the horizon. But COVID-19 has changed all of that. We are now facing an unprecedented budget crisis with far-reaching implications for all sectors of our economy and state government.

In light of these circumstances, we will continue to do everything we can to advocate for our public defense providers and to plan for what is to come. OPDS maintains its commitment to the move away from a flat-fee case rate system. Now that we have clarity about the disposition of the SPA funding, we will move forward with new contracts with public defense providers that provide

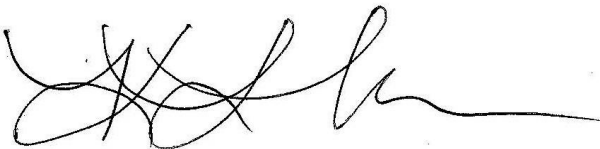
compensation for time and effort, rather than the number of cases closed. We hope that this will provide some solace to the provider community, as this type of contracting at least provides for stable compensation and caseloads during this crisis.

As we fully transition into this new contract model, we also anticipate getting more accurate information about the number of cases attorney across the state handle. OPDS has never had detailed information regarding caseloads. Now we will. We anticipate this information will be persuasive in our ongoing efforts to ensure caseloads are reasonable and constitutional.

Finally, it is important to note that this is not likely to be the last wave of COVID-19. It is highly likely that social distancing measures will continue in some capacity for the foreseeable future. There will be pressures on all state systems, including the public safety system, to operate more efficiently. OPDS is committed to exploring all options during this pandemic to continue to reduce caseloads. We hold fast to our principles that public defense providers need to be adequately resourced and clients need quality representation, regardless of whether we are in a budget crisis or not. We will also be engaging in conversations with stakeholders and legislators to explore additional policy options that address the challenges related to remote-representation and court proceedings, as well as the overcrowding of our correctional facilities

Next Tuesday, on our weekly provider call, we will be going over this information and its implications. If there are specific issues you would like us to address on the call, please email them to Kaysea R. Dahlstrom at Kaysea.R.Dahlstrom@opds.state.or.us. Our goal is to keep lines of communication open and support you and the important work you are doing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kimberly McCullough', with a long horizontal flourish extending to the right.

Kimberly McCullough
Legislative Director
OPDS



Oregon

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April 8, 2020

To: The Honorable Governor Kate Brown
State Capitol Building
900 Court Street NE
Salem, Oregon 97301

From: Lane Borg, Executive Director of OPDS

Re: OPDS Request for Special Purpose Appropriation

Dear Governor Brown:

This is a trying time for Oregonians. Many of us are concerned for the health and safety of our friends, neighbors, and family members. Health care workers are fighting to save lives. Thousands of businesses have shut their doors. For all of us, the future is uncertain. Amid this uncertainty, and in part because of it, the Office of Public Defense Services (OPDS) is respectfully requesting your support in releasing the previously budgeted \$20 million Special Purpose Appropriation (SPA) that was allocated to the Public Defense Services Commission in HB 5204 (2020).

We recognize that the state's response to COVID-19 is placing a strain on financial resources and creating difficult budget decisions. We also know that it is your priority to protect Oregonians who are hit disproportionately hard by COVID-19. Public defenders are an essential safety net for some of our state's most vulnerable children, families and adults. The reforms the SPA would support are more urgent today than ever, when our communities are experiencing unprecedented threats to their health and economic resources.

As you know, public defenders enter their clients' lives in times of distress. Today, not only are they navigating a legal system complicated by a pandemic, they are also helping clients who are at a heightened risk of contracting COVID-19 while incarcerated or engaged in court proceedings. Additional delay will likely introduce more instability to this needed safety net, as public defenders struggle to provide adequate legal representation to every Oregonian who enters the courtroom, regardless of income, status, and identity.

While the conditions in Oregon have changed, the need for the SPA has not. In fact, the SPA is needed now more than ever. As small businesses struggle to remain open across the state, the SPA would send \$17 million to providers of essential services in every county of Oregon.

We urge you to support the release of this funding by the state emergency board to avoid further weakening of a public defense system already in crisis.

Public defense in Oregon requires urgent action to meet constitutional obligations

During the 2018 legislative session, the Legislature appropriated funds for the Sixth Amendment Center (“6AC”) to provide a comprehensive assessment of public defense services in Oregon. In its [final report](#), 6AC identified numerous issues that have caused our public defense system to fall short of its constitutional obligations. Although the report identified a variety of issues, its most significant findings fall into two broad areas:

- First, our public defense system lacks sufficient oversight and accountability.
- Second, the use of a flat-fee payment system has led to overloaded and ill-equipped public defense providers.

In 2019, OPDS began the work of implementing reforms to address the issues raised in the 6AC report by improving data collection and reporting requirements, beginning the process of phasing out the flat-fee payment structure, and allocating funding to help address excessive caseloads and inadequate compensation in the short term. However, this work is just the beginning of the process of improving the quality of public defense statewide. Much more needs to be done to provide all Oregonians with competent representation, regardless of their income or identity.

With the \$20 million Special Purpose Appropriation from the legislature, OPDS will strengthen transparency, oversight and supervision to ensure clients are receiving their constitutionally guaranteed legal services by:

- Collecting and publishing data;
- Reducing caseloads and addressing compensation disparities;
- More closely supervising and supporting attorneys; and
- Ensuring responsible use of public resources.

COVID-19 is heightening the need to support public defense services

While public defense in Oregon has been in crisis since long before COVID-19 arrived, the social distancing that is required to contain the spread of this pandemic is placing additional stress on attorneys and making it more difficult to provide the most vulnerable populations with adequate legal representation.

Right now, public defenders are scrambling to provide high-quality legal services and preserve the civil rights of their clients during this pandemic. The typical challenging workload for public defenders across the state has become compounded as they navigate new

restrictions on court proceedings, encounter new difficulties communicating with clients, and arrange to have clients remain home rather than in jail while awaiting trial. Delays in court proceedings are creating backlogs and adding to already-excessive caseloads.

For those requiring legal services, the situation is even more dire. In times of crisis, when families are already under financial duress, circumstances can get even worse without the social services and support our legal system provides. Currently, the Oregon Department of Human Service allows limited visitation for parents whose children have been removed from their homes. As a result, many of those cases will be delayed or fade away entirely, pushing back reunification and adding complexity to the lives of those already facing adversity. In short, COVID-19 is placing the Oregonians who depend on public defense services at additional risk.

Oregon is at a tipping point for retaining experienced public defense attorneys and providing effective representation

The need for this Special Purpose Appropriation is urgent. Heavy caseloads, inadequate funding, and an outdated contract model have strained the ability of public defenders to provide their clients with adequate representation and exacerbated economic disparities in our community.

During the 2019 session, the Oregon Legislature approved funding for immediate improvements and a plan for more comprehensive reforms. Over the past year, we have begun the work of shifting the compensation structure for public defense work, with indications from the Legislature that funding for full implementation of proposed reforms would be coming in 2020. With anticipation that support would be coming in months, rather than years, many public defense providers have committed to hang on until the SPA funding would allow them to lower caseloads and pay for necessary support staff and overhead costs. The current system has already pushed many public defenders away from a career in public service to more stable and lucrative legal work and further delay of funding for reform is likely to lead to an exodus from the practice.

Oregon's public defense system depends on contracts with attorneys across the state, many of whom are self-employed or work for small businesses. By deploying this funding across the public defense system now, our leaders can help keep these Oregon small businesses open while improving the quality of legal representation.

As we await approval of the SPA, OPDS is set to award public defense contracts across the state for the next 18 months. Without clarity about funding, those contracts are on hold and cannot be completed. A portion of the SPA is also needed to bolster the capacity of OPDS to implement system improvements and basic administrative functions. Until the SPA is approved, OPDS will not have the resources required to ensure contractors are paid in an efficient and timely manner; increase transparency about rates of compensation and caseloads for providers across the state; or facilitate data collection and analysis.

Governor Brown, thank you for your leadership in this precarious moment. As we continue to work together to weather this storm and plan ahead for recovery, we can strengthen our ability to provide critical legal defense services for vulnerable Oregonians and put them on a path toward greater stability, economic opportunity, and a more prosperous future for our state.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Lane Borg', written in a cursive style.

C. Lane Borg, Executive Director
Office of Public Defense Services