



Oregon

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To: State-Funded Public Defense Providers in Oregon

From: Lane Borg, Executive Director, Office of Public Defense Services

Re: OPDS Contract Extensions and Changes to the Service Delivery Model

Date: September 25, 2019

In response to the 2018-19 Sixth Amendment Center (6AC) analysis and report, in February 2019, the Public Defense Services Commission (PDSC) directed the Office of Public Defense Services (OPDS) to cease case credit-based contracting, and develop alternative contracting models. Preference was expressed by the public defense community for state employee trial-level offices for the primary service delivery plan, with conflict counsel being paid hourly or through an FTE model. The 2019 Oregon Legislature considered HB3145, which would have implemented the new funding model, as well as restructured the PDSC and changed the branch of government under which the PDSC existed as an Independent Agency. The bill was amended to assign a task force to further examine the challenges and needs of the public defense structure in Oregon, but it did not pass in the Senate. Despite the failure of amended HB 3145, the directive of the PDSC to change the contracting model remains.

The Legislature gave the PDSC/OPDS a base budget increase to address two concerns for contractors: a 5% increase comprised of 3% inflation and 2% for addition to the current service level (CSL) for contractors, and a 7% increase to address excessive caseloads which means increasing capacity. During the spring of 2019, several jurisdictions cut off pick up due to a lack of staff available to take new cases.

Ultimately, a reformed public defense system must address outcomes for clients and whether the assignment of a particular provider or attorney has met their ethical representation obligations and left the client in a better position than if they were without representation. That goal cannot be addressed until we stabilize the current public defense system to address resources to providers and reduce caseloads.

As shown in the 6AC report, OPDS is essentially blind to how Public Service Account (PSA) dollars are allocated after they leave the agency as payments to Third Party Contractors. Non-profit public defense offices (31% of providers), provide reports and audits regarding individual compensation and overhead expenditures, but consortia and private bar providers do not. A critical first step is to gather information from providers about how the money is distributed and who is providing services, so we can begin to address our obligations outlined by the 6AC to ensure reasonable caseloads, reasonable compensation, and adequate infrastructure overhead.

The second step is to determine what OPDS can afford, given current authorizations, in terms of compensation and caseload. Assuming or anticipating that this will show that current resources will only fund caseloads that are too high. We need to determine what that gap is and what resources are needed to fill that gap. Until we have the ABA caseload/workload standards, we will use the NAC standards as a target. Once we have the ABA Oregon-specific caseload standards, we can assess the resources needed to achieve those standards.

Concurrently, OPDS needs to evaluate what compensation model should be adopted. Absent State employees staffing trial-level offices, either a private FTE model, hourly rate model, or a combination can be utilized; the latter being likely. For offices such as the Non-Profit Public Defenders that are restricted to only doing public defense cases, or attorneys that choose to do Public Defense work primarily, the FTE model could provide a straight forward approach that stabilizes the budget of the provider and allows OPDS to forecast resource allocation on a longer-term basis. The hourly model would eliminate the need to define cases and caseloads because the individual providers would bill time on a qualifying client’s matter, regardless of the number of counts or jurisdiction of the case. The challenge would be to process payments in a timely manner while still monitoring for accuracy.

It is the goal of OPDS to have contract extensions for existing providers completed by the middle to end of October 2019. By the end of November 2019, OPDS will define the terms of the FTE and hourly models, along with estimates of needed capacity. The RFP process will be prepared and released by the end of December 2019 with an RFP submission deadline of January 31, 2020.

RFP submissions would be reviewed and negotiated in March and April 2020, with a target to finalize agreements by the end of April for PDSC approval in May 2020, and commencement of new contracts in July 2020.

At the same time that OPDS is modifying its service delivery model, it is continuing to participate in the American Bar Association’s caseload study. Attorney providers who agree to engage in timekeeping will receive a 2% additional increase to their contracts. OPDS will be providing access to a timekeeping application – Defender Data – that can be used via computer, tablet, or phone. More information about Defender Data will be made available at the OPDS Management Conference, with webinars in the months thereafter.

Timeline

October 2019	Finalize all contract extensions by end of month
November 2019	New contracts to the PDSC, extensions discussed
December 2019	Develop new RFP for contracts beginning July 1, 2020
January 2020	RFP out by end of month
February 2020	Short Session
March 2020	RFP submissions due mid-month
April 2020	Submission review by OPDS
May 2020	Contracts discussions
June 2020	New contracts to the PDSC
July 2020	New contracts begin