



Office of Public Defense Services

OPDS Teleconference with Oregon Public Defense Providers
May 5th, 2020 10:30am – 11:30am PST

Teleconference Recap

Questions? Please send them to Kaysea.R.Dahlstrom@opds.state.or.us.

Greeting & Welcome (Kimberly McCullough)

- Thank you for joining us this morning.
- We continue to update our [COVID-19 Updates webpage](#). It's full of helpful information and resources, and it's also where we post notes from these weekly calls in case you ever need to find them.

Updates from the Executive Director (Lane Borg)

- We appreciate you taking the time to join us on this call. We think it's important to continue to do these, and we hope you find them as valuable as we do. If you ever wish to make an announcement on one of these calls, you can arrange it with [Kimberly](#) or [Kaysea](#). They also welcome and questions or feedback you may have.
- Something I have been considering lately is how to shift from tactical to strategic thinking. In terms of the current pandemic, how do we make our systems work for us in the long-term? We expect to have future closures and we need to have a better plans and systems in place to handle those.
- You may have recently heard that state agencies have been asked to participate in 8.5% cut exercise. We were contacted by the Executive branch late last week to go through this exercise. We have also been asked by the LFO to submit cut scenarios of 5, 10, and 15%. It's important to remember that this is normal and expected. Not to mention that it's just an exercise at this point. They've given some specific instructions that we're not to cut anything that was just approved by the E-Board and, at this time, the cuts should not be made to personnel. So, we are currently reviewing our budget and giving direction on what we could and couldn't include in a potential cut. In this exercise, we also get to count the unallocated Special Purpose Appropriation ("SPA") funding as a part of our cuts. This includes most of the unallocated \$2 million SPA that was originally set aside for IT, as well as the unallocated amount of the SPA funding the E-Board just released.
- Some key points I would like to make:
 1. These exercises are normal, and this is exactly what every agency goes through even in economically good times.
 2. The LFO's role in this it to make recommendations. They are simply gathering information and we are working our hardest to give it to them. They then give that information to the Governor, who makes a recommendation to the legislature.

Ultimately, only the legislature can cut our budget and they are the ones who tell us the amount of money that exists, which budget buckets it goes into, and how we are permitted to spend it. Within those buckets, it's the commission that decides how the money is used at OPDS. We make our recommendations as an agency to the commission, and they vote to enact any changes.

- Historically, when there have been cuts, our cuts have been disproportionately smaller since we are underfunded as it is. It's also important to note that a large majority of our Public Services Account ("PSA") is constitutionally mandated.
- I want to make sure we are all engaged in strategic thinking in the phased re-opening plan. It's very likely that there will be future waves of this crisis, and there needs to be additional thought put into how we might meaningfully retreat to where we are now with virtual hearings, remote work, closures, social distancing, etc. Now is the time to give feedback and input. We need to consider that the recent Chief Justice Order ("CJO") is not a "one-and-done" mater. We need to look at the CJO as an organic document that can change and evolve with feedback – something we can come together on to try to get it right. Especially as we move toward more virtual hearings, input from members of the public defense community is important. Our role is to utilize your input to advocate for these changes, so we would greatly appreciate you sharing any input and feedback you may have. Feel free to send it to [Kimberly](#), [Kaysea](#), or anyone else at OPDS you've been in contact with. Thank you again for your work.

Legislative Update (Kimberly McCullough)

- We've heard that we should expect some sort of Legislative Days to meet likely in June. For those of you who aren't familiar with Legislative Days: when the legislature is not in session (the interim), the legislature comes together once every three months for three days to hold informational hearings, at which they receive updates from various agencies and are kept informed about current issues, along with discussions of potential legislation for the next session. We don't expect a firm date or time for Legislative Days until after May Revenue Forecast. However, we are in contact with the judiciary committees – the ones that handle the most legislation affecting public defense – in anticipation of the upcoming June Legislative Days, and we will keep you posted on any developments
- Some potential legislation is being discussed related to victims' services and the victims' rights community. Included in this proposal is a provision that would give officers discretion not to arrest folks that have warrants in a broader set of circumstances than they currently can, along with provisions that relate to protective orders.
- There is also some potential legislation being discussed that relates to deadlines in cases. It is unclear what direction it will go, but we are engaged in conversations with various stakeholders, including OCDLA and ODCA. As it comes together, we will try to get more info and relay it to you.

- Eric Deitrick is currently pulling together a group of people to discuss NREs. If you are interested, please reach out to [Eric](#).
- We are working on a plan for broader stakeholder engagement. Earlier this year, we were hopeful from hearing about the Governor's interest in looking at the future of public defense. We recognize that a lot has changed since then, but we do not want to lose the opportunity to work with stakeholders and we are in the process of developing a plan to do some of that work ourselves. The Governor's office is busy and can't engage at this current time, but we hope to reengage with them in the future.
- We haven't heard anything recently about difficulty in accessing clients in jail. If you are experiencing any challenges with this, please let [me](#) know. We have a direct line to jail commanders. The heads of the Oregon Association of Chiefs of Police and the Oregon State Sheriff's Association have been working hard to address concerns

Open Questions and Announcements from Providers (Kimberly McCullough)

- **Q:** Could budget cuts potentially into a budget reduction act situation?
 - o **A:** At this time, we don't expect that. In this scenario, what they've asked for is an exercise of budget reduction. With the \$18 million of undistributed SPA allocation, we will surpass the requested 5% budget reduction exercise. We won't quite make it to 8.5% with the unallocated SPA funds alone, but it still wouldn't put us in a budget reduction act situation. If it were to happen, the legislature would bring it up in a special session this autumn, or perhaps when discussing the budget for the 2021-2023 biennium.
 - o For those who may be unfamiliar with what the budget reduction act is: In 2003, a shortfall in money and a downturn in the economy called for a budget reduction act. This occurred at the inception of our agency. The agency opted to fund everything until money ran out and things couldn't be funded anymore. Courts were shut down for 3.5 months. It created some significant discrepancies – for instance, if you had retained an attorney, you could still be prosecuted, but not if you had a public defender. The lesson that was learned was: don't defund public defense because it shuts down the party.
- **Q:** What is the current staffing situation in you're A/P department?
 - o **A:** We have regular crew working here to review bills each day. We have even seen a recent slowdown in submissions, and this means we are getting close to being caught up with our goal of a 30-day processing time. We might be down one person that we are authorized to hire because of the unallocated SPA funding, but our A/P staff are here and working hard to review bills in a timely manner.
- **Q:** Are we still expecting new contracts?
 - o **A:** The analyst team is in the process of ascertaining which contracts need extra attention. If there are only 5 or so counties that need significant reworking of contracts, then we are hopeful that we can stay on track for the July 1st date. It is

possible that we will add commission meetings as needed so that we can get through the necessary steps of rolling out new contracts: education of the commission, deliberation, voting, etc.

- **Gordon Mallon** Announcement about client contact:
 - We are currently representing a juvenile waiver client at Donald E. Long. We've been in contact with management there to try to figure out how to do psychological evaluations at this time, one of which is required by statute. Not being able to complete psychological evaluations has caused things in this case to come to a screeching halt.
- **Q:** Regarding contracts, there seems to be a partial funding gap. Is "turning off" a certain case category still a possible option?
 - **A:** We are engaging in a conversation with the community and commissioners – if they know that the alternative is a budget reduction act situation, then we need to look at whether we fund until we run out, or if we can start rationing in ways now. Again, this budget cut business is only an exercise at this point, but we are starting to take a look at things like how much money we are spending on, for example, property misdemeanors, with the idea that perhaps we can turn off a certain case category. Before we're forced into a budget reduction act situation, we will consider what it might look like to ration. This happened in the 80s; for a time, nothing was processed apart from DUII. All that said, much of our representation is constitutionally mandated, and a judge can always order representation. So, we may try to ration and be ordered to do otherwise. Note that right now, we are moving forward with funding Ramos case representations, and we plan to take that contract funding amount to the legislature.
- **Q:** Are we sticking with original timeline for the RFPs that have been submitted?
 - **A:** The contracts team granted some small extensions, and we will give due consideration to all submissions made. We are pushing the contracts team to give Lane an evaluation soon so that we can decide which contracts we can move forward with, and which contracts will have more work and negotiation to be done. If there aren't significant changes to be made to a contract, we would like to move forward quickly.
- **Q:** Is there a group in Salem meeting with the legislature on the 180-days statute?
 - **A:** Authority for the Chief Justice to delay case timelines were included in the Legislative Concept ("LC") draft that the COVID committee recently released. There has been discussion about the 60-180-day timeline for pre-trial release, but there hasn't been a formal work group for us to participate in yet. Kimberly is talking with people who would be weighing in on this, such as the judiciary committee and other stakeholders. Under current law, if there is a scheduling delay for trial, the longest someone can be held in custody pre-trial is 60 days unless there is good cause to delay, and 180 days unless they are ineligible for

bail. Some things we are discussing is whether COVID should be considered as an additional good cause to delay or if it fits into something that is already in statute. A big concern is how long people will be held in custody if COVID is another good cause for reason to delay, particularly if that allows people to be held past 180 days. Indefinite detention would be extremely problematic and there would be constitutional issues with that, yet there are some other states that appear to be following that route (and other states that are releasing people and waiving bail). It's unclear when a stakeholder group will be convened, but we will keep you all posted on developments.

- **Dan Bouck** Announcement about medical commitment:
 - o We recently handled a medical commitment case in which the client did not want to be in quarantine. We forwarded a really good how-to for those cases to OCDLA. It might also be helpful for involuntary quarantine hearings.

Closing Remarks (Lane Borg & Kimberly McCullough)

- If you have any questions or announcements you wish to make during our next provider call, please email them to [Kaysea](#) or [Kimberly](#).
- Thanks for joining us today and continuing to do the work you do. Take care!