



Office of Public Defense Services

OPDS Teleconference with Oregon Public Defense Providers
July 14th, 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 today. We really appreciate you taking the time to join our biweekly meetings.

A/P Updates (Lane Borg)

- Non-Contract, Non-Capital Hourly Attorney Rate Increase [memo](#) sent by OPDS Budget Manager Julie Fetsch on July 8, 2020.
 - o The rate raised from \$55/hr to \$75/hr. We were hoping with the release of the Special Purpose Appropriation (“SPA”), we would be able to raise it more significantly but, unfortunately, we didn’t get SPA. Work completed from July 1, 2020 forward will be billed at the new \$75/hr rate. You don’t have to get a new appointment.
- Non-Contract and Contract Capital Attorney Rate [memo](#) sent by OPDS Contracts Manager Heather Pate on July 10, 2020.
 - o There really are only a few capital cases remaining (shout-out to [SB 1013](#) for reforming capital crimes!). There have been no new capital cases filed since October of 2019. There also have been no new incidents that qualify as capital crimes. Because of new sentencing (regarding possibility of judge imposing life without parole) that has yet to be ruled on by Oregon Supreme Court, we are permitting/requiring two capital-qualified attorneys and two mitigators on each capital case, and one capital-qualified attorney and one mitigator on each case of murder in the first degree. This practice will continue until further notice. Cases of murder in the second degree will go on as normal.
- Mitigator Billing Practices [memo](#) sent by OPDS Contracts Manager Heather Pate on July 10, 2020.
 - o Since we are putting most mitigators under the NRE process, the rate will be set at \$65/hr starting on October 1, 2020. For many of you this will be an increase. For others, it will be a small ten cent decrease. When we raised rates by 5% earlier this year, the amount of \$65.10 caused some processing issues with our computers. Lowering it to an even \$65/hr will take care of that issue.
 - o Mitigators are paid at higher rate than investigators and at surface level they appear that they could be same person due to qualifications, but we haven’t done a great job of defining that. We hope to set expectations for what qualifies a person to be a mitigator, and we will be looking to OPDS General Counsel Eric Deitrick’s NRE workgroup for input and feedback on this issue. They hope to set standards around what would be appropriate for assigning a mitigator, what qualifications a mitigator would need, etc. Please reach out to [Eric](#) if you would like to participate in this workgroup, or if you have any input you would like to share.

Use of Certified Interpreters (Lane Borg)

- According to [OPDS Payment Policy and Procedures](#), for out-of-court attorney/client communication, counsel should use interpreters who are certified by the Office of the State Court Administrator, under ORS 45.291. If no certified interpreter is available, counsel should use a qualified interpreter, as defined in ORS 45.275(8)(b).
- Certified interpreters have gone through training and testing so that the State recognizes them as certified to use that language.
- Qualified interpreters are only to be used if a certified interpreter is not available. If you can't use a certified interpreter, you need to explain why you're using a qualified interpreter instead.

Upcoming PDSC Meeting (Lane Borg)

- This Thursday, July 16th, at 10:00am via Microsoft Teams
- Agenda and meeting materials can be found [here](#).

Question for Judge Albrecht (Lane Borg)

- Judge Albrecht, the chief criminal judge in Multnomah county, is anticipating reengaging in out of custody arraignments soon, as other counties have been doing. Judge Albrecht has a question around verification practices. If your jurisdiction is completing out of custody arraignments, how is verification being accomplished? Is verification approved upon completion of work remotely? Please send your experiences to [Lane](#) or [Kimberly](#) or [Kaysea](#). This interagency collaboration provides us with an opportunity to work together as best as possible to keep the system running while following our own principles.

Police Reform (Kimberly McCullough)

- The Governor announced a task force on police reform with narrow focus on police training. Kimberly will be serving on that committee and is already set to collaborate with OCDLA/ODCA. She would also like to bring your perspectives to the table, so please feel free to [reach out](#), and we'll keep you informed about how things are going as they progress.
- The new legislative committee on policing met last week and will meet again this week. They've held information hearings on variety of topics related to police issues and protest issues. We hope for more notice and time to analyze proposals, to gain community and stakeholder input, and to provide feedback this time around. In the last special session, bills were passed at lightning speed. We will do our best to keep you all informed and involved. We anticipate that they'll try to pass some bills in the next special session.

Next Special Session (Kimberly McCullough)

- We anticipate the next special session to occur at end of July or beginning of August. We may only receive a week's notice of it being called. The focus of this next special session will primarily be budget issues related to COVID, and perhaps some on police reform as well.
- As far as budget goes, it is unclear what exactly will be happening, but we remain optimistic that there are a number of legislators and advocacy organizations that understand how crucial our budget is; we have to remain realistic that budget issues are incredibly challenging for the state right now, but we continue to advocate for the importance of the work all of you do and the need to not let this emergency move us back on some of the progress we've made recently.
- I will be reaching out to legislators next week to discuss to inform them on the important work you're doing and to let them know why our budget is so important, especially now.

Drug Treatment for People on Probation (Kimberly McCullough)

- We're excited about hearing of continued interagency work and solutions. A probation officer recently denied methadone treatment for a probationer. I emailed Michael Hsu at the Parole Board, pointing out some case law that held that the statutes allow a parole officer to order a probationer to undergo treatment, but that they cannot disallow medical treatment that has been recommended by a medical provider.
- Michael did some digging and found that the legislature actually amended ORS 430.560 in 2019. [Senate Bill 910](#) (part of the opiate task force) "Removes requirement for written approval by parole or probation officer for administration of synthetic opiate as treatment for opiate addiction if requirements of statute are met." OAR 415-020-0025 says something different, but the rule isn't valid anymore considering the legislature explicitly removed the parole officer requirement.
- The Board will do the following:
 - o Contact the parole officer that denied treatment's senior manager to inform them about all of this.
 - o Coordinate with the Oregon Association of Community Corrections to discuss how best to get the message out about the change, or if the message has already been sent out, to take other steps to ensure this doesn't happen again. Their next meeting is on July 22nd.
 - o Contact OHA to inform them of the need to fix OAR 415-020-0025.
- If this is something any of you encounter, please [let me know](#) the parole officer's name, and I'd be happy to pass that along to Michael so that he can intervene.

NAPD Racial Justice Conference (Kimberly McCullough)

- A racial justice conference is hosted by the National Association for Public Defense and is scheduled for September 8-10, 2020 in Montgomery, Alabama. It is possible it will be moved to a virtual platform. You can find more information about the conference [here](#).

Open Q&A with Providers (Kimberly McCullough)

- **Q: There has been continual appointment of cases in Marion county. We see our caseloads rise to numbers we've never seen before, and yet there is currently no mechanism to resolve those cases. Has OPDS given any thought to caseload caps during COVID? And as to whether or not there would be a process around providers stopping picking up new cases for those courts who continue to appoint?**
 - o We acknowledge that these are odd circumstances right now. It's particularly challenging to assess what these extra cases demand from an attorney. Certainly, more cases being assigned without the ability to resolve them is really problematic. I'm not sure if that neatly fits into caseload standards. In the past, as far as cutting off or needing to cut off, it's really up to the attorneys themselves to know at what point their caseload is no longer manageable and to reach out to OPDS.
 - o This is a totally predictable consequence of an erratic and unpredictable time. We have not yet thought this through, but we do need to raise this issue to courts. At some point in the future, everyone (courts, District Attorneys, etc.) will be dealing with this, and we need to know the expectations. OPDS can lead by bringing this up with the Chief Justice and start having those conversations.

- **Q: Is there any progress on the NRE workgroup?**
 - o Yes, Eric is still pulling this together. We will have him put something out to notify people of workgroup.

- **Q: Something really concerning happened last week. A court employee tested positive for COVID and although court staff were notified as soon as possible on Thursday, we weren't notified until Friday and it was really only by chance. Would it be possible for OPDS to talk with OJD and the Chief Justice to come up with a uniform way to notify people in future instances?**
 - o Lane will discuss this with the Chief Justice at their next meeting on Monday. Courts need to notify more than just their staff about these instances, and an expectation should be set as to what that notification process will be. We encourage folks to reach out to [Kimberly](#) or [Lane](#) with these issues. Also, we encourage you to send an email to OJD's workgroup (cjofeedback@ojd.state.or.us) that reviews information about what's going on in different courts and works to resolve issues.

- **Q: Will there be an opportunity for providers to give input and feedback regarding payment processes? Will there be a workgroup?**
 - o There will be a workgroup. We will send an announcement later this week to all of our Listservs. The first virtual meeting is anticipated for end of July, and there may be multiple meetings depending on how the first one goes.
 - o If people have any ideas, thoughts, or concerns, please don't hesitate to send those in to [Kaysea](#) or [Kimberly](#) or [Lane](#).

Closing Remarks (Kimberly McCullough & Lane Borg)

- Thanks for taking the time to meet with us today. We're glad to have these opportunities for dialogue. If there is anything you want to address or any information you wish to present at future meetings, please let [Kaysea](#) or [Kimberly](#) know.
- We also want to let you know that we are continually appreciative and proud of the work you're doing. These are trying and difficult times. We hope you're taking time to disconnect and take care of yourselves, too. Please let us know if there's something we can do to help.
- Our next meeting is scheduled for the same time and same place: here on Tuesday, July 28th, beginning at 10:30am.