



Office of Public Defense Services

OPDS Teleconference with Oregon Public Defense Providers

July 28th, 2020 10:30am – 11:30am PST

Teleconference Recap

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

Greeting & Welcome (Kimberly McCullough & Lane Borg)

- Thank you for joining us today. We appreciate all the work that you are doing during this challenging time. We hope that these biweekly calls continue to be valuable to you.
- We want to emphasize that budget cuts haven't happened yet. The cuts that have been recommended involve money that was left over from our budget in the last budgeting cycle. It has been swept and will not affect providers. A \$1 million cut to the Appellate Division has been proposed, but it won't cut personnel or affect PSA. And if these cuts are the ones that enacted, we're not cutting contracts. For now, nothing has changed, and we are grateful for the support from legislature and the governor's office.

COVID Habeas Cases (Eric Deitrick & Kimberly McCullough & Lane Borg)

- We've noticed an increase in the number of post-conviction relief cases due to the Ramos decision. We've also seen an increase in the number of adults in custody seeking habeas relief. Back in March, we could see that this was going to be a case type that would increase significantly, and we began coordinating preparation with Tara Herivel. As of last week, there were over 100 active habeas cases. It's fulfilling work, and Tara's group has already gotten four people commuted early. She needs help and we are paying our hourly rate to attorneys who step up to assist in litigating these cases. Cases keep coming in and we don't see an end in sight anytime soon. If you have any interest in helping this cause, please contact [Tara Herivel](#).
- There are proposed budget cuts on the table for the agency. Compared to other agencies, though, we are feeling very grateful that these cuts are not going to impact you the providers or the professional services account. We think they are very reasonable cuts considering the situation we are in.
- I've spoken with several different legislators that are in the public safety arena, and I'm pleased to hear that their universal comment is not to take steps backward right now. They recognize how hard everyone is working and wish to keep this ball rolling. We had solicited information about what your caseloads are looking like. I've let legislators know that attorney caseloads are a problem – especially with the Ramos decision and COVID crisis – and that the job of a public defender is very difficult right now. The last thing we want to do is to cut back support to our providers. We remain cautiously optimistic as we move forward knowing there are lots of people in the legislature fighting for us.
- Your hard work is not going unnoticed. We receive support because of the existing need. The best way to thank these legislators is to keep doing the work. We also appreciate everyone who does that outreach and builds relationships with the elected leaders in your areas.

Ways & Means Public Safety Committee Hearing Recap (Kimberly McCullough)

- Shout-out to AFSCME and OCDLA for putting in great oral testimony on how hard you all are working and how COVID is affecting providers.

- There's a proposal to close the Shutter Creek prison, and it's possible we'll see proposals to shut more prisons in the future. We need to reduce our prison population, but many folks in the Shutter Creek community expressed concern of losing their jobs related to the prison as well as the labor the prison provides. It was a very lively hearing and you can find it on OLIS at this link: <https://olis.oregonlegislature.gov/liz/201911/Committees/JWMPS/2020-07-24-09-00/Agenda>.

Update on Police Reform Efforts (Kimberly McCullough)

- The new legislative committee continues to meet. They've posted a number of bill drafts that they'll be accepting testimony on. There's a lot of work to be done in this area. It's complicated and it requires a lot of collaboration and communication, but things are moving very quickly in the legislature right now and some bills could have unintended consequences. We are engaging on these bills to try to help inform the process.
- Here are some of the upcoming bills and changes:
 - o New bill about chemicals (such as teargas and pepper spray), munitions, and LRADS.
 - o New bill regarding uniforms and identification of officers.
 - o Expansion of the bill that previously passed regarding duty to report misconduct.
 - o Tweak to the bill that previously passed on chokeholds.
 - o Tweak to the bill that previously passed on arbitration.
 - o If you're interested in looking at these bills, you can find them by looking in the meeting materials for the hearings of the Joint Committee on Transparent Policing and Use of Force Reform: <https://olis.oregonlegislature.gov/liz/201911/Committees/JTPUFR/Overview>.
- We expect that there will be some concept coming out about the use of deadly force, as our current statutes are not constitutional. We also anticipate something about qualified immunity. We've heard that there might be something that looks at expanding programs like [CAHOOTS](#) in Eugene to other jurisdictions. It's a direct response to folks asking to defund policing and move towards investment in other programs that don't have to do with policing.

Contracts Stakeholder Meeting (Kimberly McCullough)

- We will meet to discuss OPDS contracts for legal services this Thursday, July 30th, at noon. This meeting only relates to contracts dealing with legal work. We look forward to hearing your thoughts and feedback on requesting and awarding contracts. Our goal is to move toward a more transparent and equitable process.
- Please [complete the survey](#) if you have any comments, questions, or feedback. There are no mandatory answers and you can respond anonymously. Feel free to spend two minutes on it or fifteen minutes on it.
- If you missed the meeting, you can view it [here](#).

COVID Caseloads (Kimberly McCullough)

- We sent a request to the Pond about COVID caseloads, and we're universally hearing that caseloads are increasing for folks due to lack of resolution in cases, whether that be due to court operations, not receiving satisfactory plea offers, or lack of time pressure.

Open Comments & Concerns Regarding Caseloads (Kimberly McCullough & Lane Borg)

- **Comment:** The Chief has fully opened up out-of-custody arraignments but is not conducting any out-of-custody trials until probably after the first of the year. I'm concerned that our number of cases are rising and this will become a problem quickly unless we see the courts shutting down.

- Lane: I brought this issue up with the Chief. The courts' perspective is that everything is running *except* out-of-custody jury trials. The dynamic that is missing from that is that criminal defendants are some of the most optimistic people I know because they always think tomorrow will be better today. Improvement won't happen without the threat of jury trials going on. Without a credible eleventh hour, our clients can't be expected to resolve cases. As a possible solution, DAs could make better offers on lower level cases. The problem with cutting off cases is that we don't know how long this crisis will last. If we ramp up capacity around this bulge that is being created now, it might create other problems down the road. This situation requires intentional conversation from all the parties involved.
- **Comment:** I missed the survey link (find it [here!](#)). Also, virtual hearings are becoming contested matters frequently.
 - We need to have a higher-level stakeholder meeting about this. Lane is also in discussion with the Chief about this matter.
- **Comment:** We're having trouble getting any work – including offers or quick communication – out of the DAs, even on cases that are ready to be resolved. We've been pushing too back at the presiding judge in our jurisdiction. Unless we get these presiding judges to do things differently, our number of cases isn't going to decrease. We think that presiding judges need direction from the Chief, and we encourage high level communication to occur so this message can get across.
- **Comment:** In Douglas county we'll be back running full operations in August. Judges are upset because we have to double- and triple-set, although that differs county to county. It would be nice to have consistent decision making in how we proceed.
- **Comment:** Trials are being continued, including two Murder 1 cases I have that are being continued into 2021. Preserving mitigation and witness testimony has been difficult and time consuming. We're preparing lots of declarations and this makes for lots more work in an uncertain world. Our mitigation group sent you an email regarding this. Did you receive it? We would appreciate a Zoom call to discuss this.
 - Yes, we received your message and we appreciate you bringing it up. We're discussing this internally, convening an NRE work group, and will get back to you soon.
- **Comment:** Getting paid is taking longer and longer, even moving into the six-week range. Given what's going on, it's making things more difficult.
 - We've had unevenness here due to COVID circumstances and summer vacations. Julie will address that and have something go out to people and/or posted to our website with an update as to where that timeline is at.
- **Q:** What do we do in the short term? We have an ethical obligation to say when we can't take on more cases.
 - **Comment in Response:** I think you answered your question. That was the point of the ABA study.
 - Kimberly has raised this with the legislature. We're not sure how big this problem is going to get or when it will be resolved. We've heard your suggestion to see if we can get the judicial department to see some of the consequences of their actions. Right now, there is a bottleneck being created and we need to create consistency on how to handle it. There are state-level conversations as well as conversations with local actors that need to happen. Each of you licensed attorneys have an ethical obligation to not take on more cases than you can handle. If we look at in terms of a problem, the intake has not turned off and the output is plugged up. It has created a bulge but, then again, the intake hasn't doubled or tripled. Feel free to [write to me](#) with your other ideas. This

situation is uniquely different than the number of filings going up in a sustainable way where we would ramp up capacity.

- **Comment:** It would be helpful to get a sense of what a maximum case number should be. We know things differ from county to county. My attorneys have doubled their caseloads, but I don't know when to say enough is enough. Without set guidance as to what you expect it to be, I worry about the ad hoc approach.
 - o We're not the only state in this crisis right now. Perhaps we should reach out to out-of-state attorneys or to the ABA people about caseloads. I want to send out a lot of empathy to all of you. This must be incredibly stressful to deal with.
- **Comment:** I'm concerned about the winter when cold and flu season hits. As employers, we'll have an obligation to send people home to quarantine for 14 days. I just want to make sure this stays at the front of our minds.
- **Comment:** I'd like to add on to the previous comment about the letter from the community of mitigators, which we have not had any response to. We as a community would like to speak with you. Is there a plan for OPDS to respond? We would like to speak to you as a body.
 - o Yes, we got the letter and yes, we will respond. This has become the #1 priority for Eric's NRE workgroup. I apologize that we can't give you a date, but we can assure you that there have been many discussions in our office. Your concerns have been heard, but we can't give you a specific date for our response at this time.

Closing Remarks (Kimberly McCullough)

- This has been a very productive meeting. We appreciate everyone joining us, and those who spoke up made comments and shared your experiences. We have a lot to follow up on this meeting, but it has been a productive conversation. Our next meeting is scheduled for the same time and same place in two weeks: August 11th!