



## Office of Public Defense Services

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OPDS Teleconference with Oregon Public Defense Providers  
August 11<sup>th</sup>, 2020 10:30am – 11:30am PST

### Teleconference Recap

Questions? Please send them to [Kaysea.R.Dahlstrom@opds.state.or.us](mailto:Kaysea.R.Dahlstrom@opds.state.or.us).

### Greeting & Welcome (Kimberly McCullough & Lane Borg)

- Welcome to everyone who has joined. We appreciate your input and staying in communication with us. This continues to be a challenging time and we appreciate all the work you're doing.
- The ABA survey is still going on. The ABA recently published their report on Indiana's attorney workload standards. [Take a look at it](#); it will give you a good idea of what to expect.
- Kimberly has pulled together a stakeholder group to discuss the burgeoning caseloads across the state. If you have particularized ideas or feedback on this, please send them to [Lane](#), [Kimberly](#), or [Kaysea](#).

### Special Session Updates (Kimberly McCullough)

- A fast and furious legislative special session took place yesterday. There are two main bills that impact public defense:
  - o [Budget Bill SB 5723](#) – this large budget bill included reductions to all the agencies' budgets. There were significant cuts across the board to a variety of agencies. We're very grateful that our cuts weren't as significant and that there was no change to our Professional Services Account ("PSA") that we use to pay providers. Below is a list of provisions that relate to us:
    - Title IV-E funding – this funding is from the federal government and relates to representation of parents and kids in dependency cases. Not too long ago, the federal rules of reimbursement changed to include legal representation. We estimate that we will be able to get at least \$9 million of reimbursement in a biennium. We've had a lot of back and forth about whether we can keep that funding. In light of COVID and the budget deficit the state is facing, we were worried that these funds would be reabsorbed into the general fund. Fortunately, we were able to secure half (\$4.5 million) to use it to improve parent child representation. The remaining \$4.5 will be swept into the state general fund. We will continue to advocate for OPDS being able to use Title IV-E funding in future budget cycles.
    - Emergency Board funding – the remaining portion of the \$20 million Special Purpose Appropriation ("SPA") that had been allocated to the E-Board was swept back into the general fund. This doesn't reduce our budget, but that money is no longer available to add to our budget.
    - About \$2 million in cuts to our agency – but not to the PSA – and we find that to be very reasonable.
  - o [Policing Bill HB 4301](#) – many different proposals were on the table, but this was the one proposal that the House and Senate could agree upon. This bill:

- Amends provisions related to chokeholds that were passed during the last special session. This bill prohibits chokeholds, except for in circumstances where allowed under our self-defense and defense-of-others statutes. These two statutes relate to [when a person can use deadly force to defend themselves or others](#), as well as [the limitations to those circumstances](#). This standard that applies to the general public will now apply to law enforcement.
- Changes use of force and use of deadly force statutes to bring them in line with constitutional law by eliminating any subjective components as to when deadly force can be used and requiring de-escalation/alternatives and warnings.
- We'll have to see how this plays out in practice and litigation, but it moves our statutes to be more in line with other states.

#### NRE Workgroup Update (Eric Deitrick)

- We have finalized a group of 16 people. The first meeting will be virtual and is scheduled for August 21<sup>st</sup> at 3pm. We plan to meet every two weeks at least through September with a goal to advise the agency on changes and improvements that can be made to the NRE system. There are eight attorneys in the group, an investigator, a mitigator, a transcriber, a psychologist and forensic evaluator, an expert on jury processes and group thinking, an office manager of the Marion County Public Defender's office, an interpreter, and an IT and document management specialist. We really tried to find people with natural constituency, along with geographical and work experience diversity. Here's the list of members:
  - Elizabeth Baker, Attorney at Law
  - Russ S. Barnett, Russell S. Barnett, III PC
  - K.O. Berger, Katherine O. Berger, PC
  - Russ Bretan, Court Discovery Management
  - James Comstock, Insight Legal Investigation
  - Kathleen Dunn, Strawberry Mountain Law
  - Danna Garcia, Certified Court Interpreter, Paralegal
  - Jamie Gerlitz, Jamie L. Gerlitz LLC
  - Cort Heroy, Heroy Consulting
  - Brenda Hollister, Transcription
  - Jennifer Humbert, Public Defender of Marion County
  - Zara Lukens, Public Defense Services of Lane County
  - Dr. Alexander Millkey, NW Forensic Institute
  - Karla Nash, Deschutes Defenders
  - Autumn Shreve, Multnomah Defenders, Inc.
  - Andrea Titus, Andrea Titus Mitigation, MCR
- If you have ideas or feedback you wish to give, please contact [Eric](#) or those group members.
- The three main goals of this workgroup are to:
  - Improve NRE processes and make them easier for attorneys, providers, and the agency.
  - Solicit substantive input on what we currently fund: when do we fund grand jury transcription? Cell phone extraction? Tele-evaluations by psychologists? Etc.
  - Advise the agency on tough choices due to COVID budget limitations.

#### Caseload Update (Kimberly McCullough)

- We appreciate everyone who has responded to Mae Lee and I and those who provided information and feedback on our call with providers two weeks ago. Please continue to share how caseloads in your country are being affected by COVID and court closures with. The more information we have, the better we will be able to inform and converse with stakeholders.
- This Friday we have a meeting with folks at OJD, DOJ, ODCA, OCDLA, and OSB to initiate a conversation about what's going on with public defense caseloads. My hope is that we can then have some strategic conversations on how to address these issues, including how courts and DAs are handling cases. There's some collaboration and cooperation that needs to happen. This may be something we can't completely resolve through conversation but informing these people as to what's going on is important. If caseloads get too high, we need to find a way to get more legal representation for folks and that'll be an expense to our agency.
- We encourage you to reach out either to either [your analyst](#) or [Kimberly](#) to let us know what's going on in your county, particularly if you are getting close to a point where you may need to cut off taking new cases.

#### Contract Survey Reminder:

- We have a survey out seeking your input on our contract process and how we compensate legal service providers. Please take a moment to provide your thoughts. You can answer as many or as few questions as you'd like, and you may remain anonymous if you wish. Here is the survey link: <https://s.surveypplanet.com/Z-BF9UHGR>
- I will be compiling all that information to provide it to our commission. We encourage you to provide your feedback so that your views are represented.

#### Open Q&A with Providers (Kimberly McCullough & Lane Borg)

- **Comment:** There are 7 DAs in Clatsop county, only one in the office per day, and they don't work when they're at home. Some attorneys here have 100+ defendants but they are not resolving any cases. Our presiding judge said we probably won't have a jury trial until after the first of next year.
  - o We're seeing this in many jurisdictions. This is, in part, the motivation for Kimberly's meeting on Friday. Without jury trials or criminal cases, clients are not motivated to resolve their case unless there truly are fire sale offers from the DAs. To add to the situation, the courts are seeing their dockets back up. We need to have frank conversations with our stakeholders about what's possible to deal with and what's not.
  - o We've been in a similar situation in the past and the legislature ultimately made a plea to DA association for cooperation. Coffee Creek was almost at capacity a couple years ago, and a letter was sent to DAs asking them to make changes. We need cooperation and creative thinking about how these cases can resolved.
- **Q:** Do you have a written version of your special session budget update?
  - o <https://olis.oregonlegislature.gov/liz/2020S2/Measures/Overview/SB5723>
  - o This bill includes about \$2 million in COVID-19 reductions to our agency budget; allows us to keep/spend ½ (\$4.5 million) of the Title IV-E funds we will receive from the federal government; sweeps three SPA accounts currently allocated to the E-Board back to the General Fund; and provides us with \$200,000 for PCRPA attorney training.
  - o Breakdown section-by-section:

- Section 40 - creates a \$9 million Other Funds Limitation to allow our agency to spend federal Title IV-E funds received for reimbursement of dependency representation expenses.
  - Section 41 – reduces our General Fund appropriation by \$4.5 million (this is the state sweeping ½ of the Title IV-E funds).
  - Section 162 – moves the remaining portion of the \$20 million SPA from the E-Board back to the General Fund.
  - Section 163 – moves the \$2 million IT project SPA from the E-Board back to the General Fund.
  - Section 164 – moves the \$1 million UUV SPA from the E-Board back to the General Fund.
  - Section 333 – reduces our Appellate Division appropriation by \$1,183,707
  - Section 334 – reduces our professional services account by \$174,506
  - Section 335 – reduces our contract and business services account by \$538,559
  - Section 344 – increases PCRCP attorney training funding by \$200,000
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- **Q:** Is the federal match money staying in the Professional Services Account?
  - Yes, that \$4.5 million is staying in the PSA.
- **Comment:** I think it's a mistake to say that the 11<sup>th</sup> hour doesn't affect the prosecution. Without it, there's no incentive for prosecution to look at files. And clients don't accept the offered pleas.
  - The key is for the DAs to come to the table for a conversation around this and to be reasonable with us. And we need judges to sign off on the proposed solutions. Always be honest with your client when discussing what's going on and what their choices are.

Closing Remarks (Lane Borg & Kimberly McCullough)

- I wanted to acknowledge that the IV-E money that we were able to get is a victory for the agency and it's thanks to the good work of Kimberly, Julie, and the juvenile team.
- Thanks for joining us! Our next meeting is scheduled for Tuesday, August 25<sup>th</sup>, at 10:30am.