



Office of Public Defense Services

OPDS Teleconference with Oregon Public Defense Providers

September 22nd, 2020 10:30am – 11:30am PST

Conference Line: (866) 390-1828 | Participant Code: 805008

Invitees: All Oregon Public Defense Providers, Lane Borg (Executive Director, OPDS), Kimberly McCullough (Legislative Director, OPDS), Eric Deitrick (General Counsel, OPDS), Keren Farkas (PCR Manager, OPDS), Julie Fetsch (Budget Manager, OPDS)

Greeting & Welcome (Kimberly McCullough)

- Welcome everyone! Lane is out of the office today, so it will just be me.

Legislative Update (Kimberly McCullough)

- Bills are beginning to be drafted for the 2021 Legislative Session. For OPDS, the main issue will be funding. The bulk of the agency's advocacy will be around trying to maintain the Professional Service budget which is used to pay contractors. Because COVID-19 and the wildfires have depleted the state budget in an additional way, advocating for funding will be especially challenging. A variety of agencies will see cuts to their budgets. It will be important to acknowledge that public defense providers are essential workers and that public defense cannot be put on hold. We must ensure we are providing the constitutionally mandated services.
 - o Revision of the Public Defense Reform Bill. As you may recall, there was a bill that was all ready to be passed last session, but that session was ended without a quorum. We have been talking to legislators about getting that bill reintroduced.
 - o Discovery Reform. This bill will focus on discovery costs and the amount prosecutors are charging defendants, much of which is being paid for by OPDS.
 - o Police Reform. It's unlikely that we will see any more police reform bills passed until the Long Session in 2021. We are not anticipating another special session before the election. If one occurs after election, it would likely be budget focused. For that reason, attention and efforts are being shifted to working on proposals. Some such proposals include Brady reform, doxing, and riots (what can a person be charged with in relation to riots, and when police can declare a riot). We are also anticipating proposals to do with qualified immunity (uniform and identification display). A task force on police training is ongoing but experiencing a small pause due to being occupied with wildfire response.
- We are hearing that criminal justice reform advocates are interested in pursuing things such as sentencing reform, expungement and availability of expungement, and cannabis expungement. Because the budget will be such a huge issue in the Long Session, policy bills that focus on saving the state money or that are neutral in a fiscal sense will have a better chance of being passed.

Next PDSC Meeting

- The next commission meeting is scheduled for Tuesday, September 29th, at 10:00am and will be held virtually. You can find the agenda, meeting materials, and information on attending the live event on our [website](#).
- The main discussion will be around contracts. We will be asking commissioners to give us direction on how contracts will be awarded so we can get those in place before the new year.

[OPB Think Out Loud Segment on Public Defense Provider Caseloads](#)

- This Think Out Loud [segment](#) was a follow-up to great [article](#) on pandemic caused delays in court proceedings recently published in the Register Guard. Cases aren't getting resolved at the same rate and new cases continue to be added. In the Think Out Loud [segment](#), the reporter and Lane County's Brook Reinhard discuss what's currently happening in the system.
- When we slow down things in the courts and experience challenges like this, it has a big impact on the work you all do. We need to invest more into public defense rather than less; people's civil rights are at stake.
- We really appreciate everyone who has sent in information about their caseloads. We continue to discuss these issues with stakeholders and OJD. If anything changes, please email your contract analyst. If you're getting to the point where you think you will need to cut off cases, the sooner you let us know the better we can problem solve and get hourly attorneys lined up to help out.

Farewell Announcement (Kimberly McCullough)

- I am leaving OPDS and will be joining the DOJ in their legislative work. Aaron Knott is going to work with Mike Schmidt, and I will be taking over his position. There will be a vacancy at OPDS. I will still be around, and you will have a friend over on the other side that cares about the work you do and shares your values. I'm sad to leave OPDS, but I am looking forward to this new chapter in my life.

Open Q&A with Providers

- **Q:** Are any other counties doing out of custody trials?
 - o **A:** In Marion County we are regularly doing out of custody one-day jury trials. We've even rented the Grand theater across the street from the court.
 - o **Comment from Kimberly McCullough:** We're hoping that creative solutions like this will be able to address some of the backlog. There are so many consequences to these cases languishing.
 - o **A:** In Clatsop county we are not doing jury trials or in custody trials at this time. We're starting to run into a situation where we are no longer resolving any cases. Recently we began doing some settlement conferences, but it is difficult at best.
- **Q:** After the PDSC meeting, will something be sent out about how we are moving forward?
 - o **A:** The commission is being asked to give clear instructions to analysts on how they want it to go. Your analysts will then reach out to you to discuss how we're moving forward.
- **Q:** If the legislature cuts the agency's budget, how will we continue on?
 - o **A:** There will be budget issues if the PSA is cut. I don't want to speak for Lane, but I have heard that he does not want to put providers in a situation where they're being asked to

do more for less. If we reach that crisis point and the state won't respond, we won't provide public defense for certain types of cases and that may cause crisis in courts. Perhaps it would be good for us to have Lane put his thoughts down to share with folks so they have a bit more clarity. It is not fair or sustainable to say you are already overworked and underpaid. When the Sixth Amendment Report report came out with deficiencies in our system, we realized we would have to face a shift in the way things were being done. It doesn't make sense to move backwards, as it puts the State at risk for litigation.

- **Q:** There is a delay in payment due to the smoke/wildfires and staff being misplaced. Does OPDS have a plan to stop delays caused by crises in the future?
 - o **A:** (Julie Fetsch) We are catching up and have the A/P teamwork over weekend. In addition, we have interviewed and made offers to hire two additional staff members – this will be a 20% increase to the entire team. COVID has made it difficult to add staffing, and I have great hopes that we will get caught up quickly. We are a State agency working with taxpayer dollars and we need to be onsite to be plugged into that system. The documents that are worked on are proprietary and cannot be accessed or worked on from home. Its not possible to do that and keep everything confidential in the way we need to do so. The NRE workgroup is looking at things systematically. The financial management system we are working on is a very long-term, frustrating and bureaucratic process. We are working diligently on it, however, and recently provided the LFO with the required business case. It will be a system that providers will use to invoice and submit NREs, and we will use to process those payments. It takes a long time to get changes like these made to be able to use them as an agency. But we recognize that the effort will be worth it and the it will create efficiencies in both the system and our business process.
- **Comment from Brook Reinhard:** Kimberly, thank you so much for your time at OPDS. I know I am not alone in saying that I am sad that it was short, but I really appreciate your efforts in OPDS reaching out more. I'm wishing you luck in all you do!