



Oregon

Office of Public Defense Services

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April 8, 2020

To: The Honorable Governor Kate Brown
State Capitol Building
900 Court Street NE
Salem, Oregon 97301

From: Lane Borg, Executive Director of OPDS

Re: OPDS Request for Special Purpose Appropriation

Dear Governor Brown:

This is a trying time for Oregonians. Many of us are concerned for the health and safety of our friends, neighbors, and family members. Health care workers are fighting to save lives. Thousands of businesses have shut their doors. For all of us, the future is uncertain. Amid this uncertainty, and in part because of it, the Office of Public Defense Services (OPDS) is respectfully requesting your support in releasing the previously budgeted \$20 million Special Purpose Appropriation (SPA) that was allocated to the Public Defense Services Commission in HB 5204 (2020).

We recognize that the state's response to COVID-19 is placing a strain on financial resources and creating difficult budget decisions. We also know that it is your priority to protect Oregonians who are hit disproportionately hard by COVID-19. Public defenders are an essential safety net for some of our state's most vulnerable children, families and adults. The reforms the SPA would support are more urgent today than ever, when our communities are experiencing unprecedented threats to their health and economic resources.

As you know, public defenders enter their clients' lives in times of distress. Today, not only are they navigating a legal system complicated by a pandemic, they are also helping clients who are at a heightened risk of contracting COVID-19 while incarcerated or engaged in court proceedings. Additional delay will likely introduce more instability to this needed safety net, as public defenders struggle to provide adequate legal representation to every Oregonian who enters the courtroom, regardless of income, status, and identity.

While the conditions in Oregon have changed, the need for the SPA has not. In fact, the SPA is needed now more than ever. As small businesses struggle to remain open across the state, the SPA would send \$17 million to providers of essential services in every county of Oregon.

We urge you to support the release of this funding by the state emergency board to avoid further weakening of a public defense system already in crisis.

Public defense in Oregon requires urgent action to meet constitutional obligations

During the 2018 legislative session, the Legislature appropriated funds for the Sixth Amendment Center (“6AC”) to provide a comprehensive assessment of public defense services in Oregon. In its [final report](#), 6AC identified numerous issues that have caused our public defense system to fall short of its constitutional obligations. Although the report identified a variety of issues, its most significant findings fall into two broad areas:

- First, our public defense system lacks sufficient oversight and accountability.
- Second, the use of a flat-fee payment system has led to overloaded and ill-equipped public defense providers.

In 2019, OPDS began the work of implementing reforms to address the issues raised in the 6AC report by improving data collection and reporting requirements, beginning the process of phasing out the flat-fee payment structure, and allocating funding to help address excessive caseloads and inadequate compensation in the short term. However, this work is just the beginning of the process of improving the quality of public defense statewide. Much more needs to be done to provide all Oregonians with competent representation, regardless of their income or identity.

With the \$20 million Special Purpose Appropriation from the legislature, OPDS will strengthen transparency, oversight and supervision to ensure clients are receiving their constitutionally guaranteed legal services by:

- Collecting and publishing data;
- Reducing caseloads and addressing compensation disparities;
- More closely supervising and supporting attorneys; and
- Ensuring responsible use of public resources.

COVID-19 is heightening the need to support public defense services

While public defense in Oregon has been in crisis since long before COVID-19 arrived, the social distancing that is required to contain the spread of this pandemic is placing additional stress on attorneys and making it more difficult to provide the most vulnerable populations with adequate legal representation.

Right now, public defenders are scrambling to provide high-quality legal services and preserve the civil rights of their clients during this pandemic. The typical challenging workload for public defenders across the state has become compounded as they navigate new

restrictions on court proceedings, encounter new difficulties communicating with clients, and arrange to have clients remain home rather than in jail while awaiting trial. Delays in court proceedings are creating backlogs and adding to already-excessive caseloads.

For those requiring legal services, the situation is even more dire. In times of crisis, when families are already under financial duress, circumstances can get even worse without the social services and support our legal system provides. Currently, the Oregon Department of Human Service allows limited visitation for parents whose children have been removed from their homes. As a result, many of those cases will be delayed or fade away entirely, pushing back reunification and adding complexity to the lives of those already facing adversity. In short, COVID-19 is placing the Oregonians who depend on public defense services at additional risk.

Oregon is at a tipping point for retaining experienced public defense attorneys and providing effective representation

The need for this Special Purpose Appropriation is urgent. Heavy caseloads, inadequate funding, and an outdated contract model have strained the ability of public defenders to provide their clients with adequate representation and exacerbated economic disparities in our community.

During the 2019 session, the Oregon Legislature approved funding for immediate improvements and a plan for more comprehensive reforms. Over the past year, we have begun the work of shifting the compensation structure for public defense work, with indications from the Legislature that funding for full implementation of proposed reforms would be coming in 2020. With anticipation that support would be coming in months, rather than years, many public defense providers have committed to hang on until the SPA funding would allow them to lower caseloads and pay for necessary support staff and overhead costs. The current system has already pushed many public defenders away from a career in public service to more stable and lucrative legal work and further delay of funding for reform is likely to lead to an exodus from the practice.

Oregon's public defense system depends on contracts with attorneys across the state, many of whom are self-employed or work for small businesses. By deploying this funding across the public defense system now, our leaders can help keep these Oregon small businesses open while improving the quality of legal representation.

As we await approval of the SPA, OPDS is set to award public defense contracts across the state for the next 18 months. Without clarity about funding, those contracts are on hold and cannot be completed. A portion of the SPA is also needed to bolster the capacity of OPDS to implement system improvements and basic administrative functions. Until the SPA is approved, OPDS will not have the resources required to ensure contractors are paid in an efficient and timely manner; increase transparency about rates of compensation and caseloads for providers across the state; or facilitate data collection and analysis.

Governor Brown, thank you for your leadership in this precarious moment. As we continue to work together to weather this storm and plan ahead for recovery, we can strengthen our ability to provide critical legal defense services for vulnerable Oregonians and put them on a path toward greater stability, economic opportunity, and a more prosperous future for our state.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Lane Borg', with a stylized flourish at the end.

C. Lane Borg, Executive Director
Office of Public Defense Services