



Oregon

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April 23, 2020

To: Oregon Public Defense Providers

From: Kimberly McCullough, Legislative Director of OPDS

Re: E-Board Hearing 4/23/2020 and LFO Recommendation Regarding PDSC SPA

Public defense providers,

The Legislative Emergency Board (E-Board) held a hearing this morning, at which they voted to release of a portion of the \$20 million Special Purpose Appropriation (SPA) authorized by HB 5050 (2019). While we had been anticipating this hearing to occur in May, we received notice this week that the E-Board would be holding a special hearing on an expedited basis to address several pressing needs related to COVID-19.

As we reported at our commission meeting last week and in our weekly provider calls, we have been aggressively advocating for a full release of the SPA, in order to address the constitutional deficiencies in our public defense system. For your reference, a letter we sent to the governor and legislators who are key decisionmakers related to budget issues is attached to this email. It outlines our view that public defense in Oregon requires urgent action to meet our constitutional obligations under the Sixth Amendment, and that COVID-19 has heightened the need to support our public defense service providers, as they continue to provide front-line support for vulnerable Oregonians in increasingly challenging circumstances.

At the same time, we are deeply aware that Oregon's economic situation is dire. We have been hearing predictions that the state is facing several billions of dollars of shortfall for the next biennium and that all state agencies are potentially facing 20-25% budget cuts for the next biennium. All executive branch agencies have already been directed to halt implementation of any policy changes that have budgetary impact. Because of this, the E-Board is extremely hesitant to spend money, particularly funding that rolls up into agency budgets.

Because of these serious budget considerations, the Legislative Fiscal Office (LFO) recommended to the E-Board that the PDSC receive one-time funding of \$3,875,965 from the SPA. This recommendation was adopted by the E-Board. It includes:

- \$1,589,702 to fund nine positions that were administratively established by our agency. This funding will not increase the number of individuals on staff at OPDS. Instead, these are individuals who are already working at our agency as limited duration staff, and who are meeting crucial needs of the agency. In particular, the majority these staff are working on accounts payable and non-routine expenses. These staff are essential for getting payments to providers out the door. This allocation of funding will simply cover the cost of keeping these individuals on our staff until July of next year. In order to keep these positions on staff past July of 2021, we will need legislative approval. Note that our original SPA request also

included 14 new positions which we hoped to hire with SPA funding, but LFO is not recommending that those positions be funded at this time.

- \$1,267,848 for contract information technology services from the Oregon Judicial Department (OJD). This funding is crucial to our ability to continue our work on a new case management and data collection system. This item was not included in our request for the SPA. However, LFO has indicated that because this is one-time funding that will help our agency move forward with ongoing system improvements, it is appropriate to include in the SPA funding. It is our understanding that this funding is also meant to replace funding from another \$2 million SPA that was earmarked for this IT project. Because the project is being funded in this SPA, that \$2 million SPA funding will be reabsorbed into the general fund.
- \$868,415 to increase provider rates for interpreters and investigators. This is not the full amount we had requested in our SPA but would allow for an increase in interpreter rates to match OJD's new rate, along with a meaningful rate increase for investigators. We understand that this funding is being recommended because it is a relatively small line-item that addresses pressing needs. In particular, interpreter rates have already been increased by OJD, and without a corresponding increase in our rates, our providers will face great difficulties finding interpreters willing to work for our lower rates. Specific rate increases will, of course, need to be approved by the PDSC, but LFO is recommending that this funding be made available for that purpose.
- \$150,000 on a one-time basis to provide training for juvenile dependency attorneys participating in the Parent Child Representation Program (PCRP). This funding was not included in our SPA request. However, it was a separate item that we had asked to be funded during the short session and was approved and included as a separate item in the short session budget bill. Because of the way session ended, that bill did not pass, and the funding was lost. LFO has recommended that it now be included in the SPA allocation because it is one-time funding that is crucial to the success of the PCRP program. They will anticipate us coming back to ask for funding to continue to support training for juvenile dependency attorneys next legislative session.

Absent from LFO's recommendation is funding to increase compensation for public defense attorneys or to add attorneys to the public defense workforce. As you will note in our letter to the governor, this is something we strongly advocated for. However, because of the significant roll-up costs this funding would create, and because the legislature is bracing itself for budget cuts, LFO is not recommending these increases at this time.

We understand that this will be disappointing to the public defense community. We share that disappointment, as we have been working for several years to push for reform and increased funding that is needed to reduce caseloads and pay for necessary overhead and support staff. We were so close to significant funding increases in the middle of last legislative session, with productive reform work close on the horizon. But COVID-19 has changed all of that. We are now facing an unprecedented budget crisis with far-reaching implications for all sectors of our economy and state government.

In light of these circumstances, we will continue to do everything we can to advocate for our public defense providers and to plan for what is to come. OPDS maintains its commitment to the move away from a flat-fee case rate system. Now that we have clarity about the disposition of the SPA funding, we will move forward with new contracts with public defense providers that provide

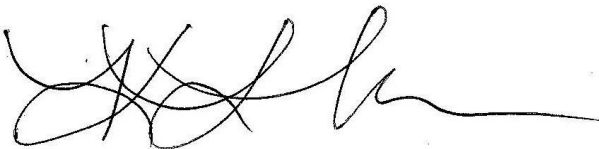
compensation for time and effort, rather than the number of cases closed. We hope that this will provide some solace to the provider community, as this type of contracting at least provides for stable compensation and caseloads during this crisis.

As we fully transition into this new contract model, we also anticipate getting more accurate information about the number of cases attorney across the state handle. OPDS has never had detailed information regarding caseloads. Now we will. We anticipate this information will be persuasive in our ongoing efforts to ensure caseloads are reasonable and constitutional.

Finally, it is important to note that this is not likely to be the last wave of COVID-19. It is highly likely that social distancing measures will continue in some capacity for the foreseeable future. There will be pressures on all state systems, including the public safety system, to operate more efficiently. OPDS is committed to exploring all options during this pandemic to continue to reduce caseloads. We hold fast to our principles that public defense providers need to be adequately resourced and clients need quality representation, regardless of whether we are in a budget crisis or not. We will also be engaging in conversations with stakeholders and legislators to explore additional policy options that address the challenges related to remote-representation and court proceedings, as well as the overcrowding of our correctional facilities

Next Tuesday, on our weekly provider call, we will be going over this information and its implications. If there are specific issues you would like us to address on the call, please email them to Kaysea R. Dahlstrom at Kaysea.R.Dahlstrom@opds.state.or.us. Our goal is to keep lines of communication open and support you and the important work you are doing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kimberly McCullough', with a long horizontal flourish extending to the right.

Kimberly McCullough
Legislative Director
OPDS