

Ms. Connie Seeley
Special Advisor for COVID-19 Implementation
Oregon COVID-19 Vaccine Advisory Committee
Via electronic transmission: covid.vaccineadvisory@dhsosha.state.or.us

Dear Ms. Seeley,

Oregon criminal and juvenile defense attorneys and their staff should be prioritized as “essential workers” under Phase 1B and made eligible for accelerated access to the COVID-19 vaccinations. Attorneys and their staff (e.g., paralegals, investigators, interpreters) have close, repeated contact with clients, some of whom are the most vulnerable in our community, and have to enter high-risk congregate care settings such as jails.

Defenders and staff are on the very front lines in the criminal and juvenile justice system. OPDS Executive Director Lane Borg explained generally why this is imperative in his letter of November 13, 2020 (attached). But more specifically, the defense must —by necessity— have continual, extensive and repeated close contact with each and every client through every stage of the proceeding to ensure a defendant or client receives effective assistance of counsel.

The need for attorneys and their staff (e.g., paralegals, investigators, interpreters) to have close and continued contact applies whether the defendant is in custody or out of custody and whether the client is represented in a criminal case or a juvenile dependency or juvenile delinquency case. This need for close and continued contact with a client means an attorney and their staff are put at risk to contract COVID-19, far more than a judge or a prosecutor, for whom contact with an accused is generally always distanced and minimal. Simply stated, the prosecutor and the judge do not have close contact with an accused; the defense attorney does.

1) Initial Assessment

Criminal and juvenile defense attorneys and their staff need to have continual and close contact with their clients to determine what language the client speaks and if an interpreter is needed, the client’s criminal history, educational background, mental health history, and medical, military and immigration status.

These initial contacts also help build a trusted relationship between the attorney and the client because the client can see the care, effort and time the attorney puts into the relationship.

2) Case Specific Information

After an attorney has initial information about her client, she needs to evaluate the evidence the state claims to have against the accused. The defense attorney

needs to consult with the client about statements in police reports (“discovery”) to test the accuracy of such information and to determine whether there are potential witnesses who could contradict claims in the discovery or lead to contrary evidence or information.

The defense attorney will likewise rely on the assistance of a defense investigator, who often needs to have direct contact with the client also, to have a full and fair picture of the direction and needs of a case.

Reviewing discovery is an ongoing process and requires continued and close contact with the client. If the client is in custody, this means going to the jail again and again. If the client is not in custody, this still often means in-person contact because face-to-face communication is the most effective means to evaluate demeanor, reaction and to ensure a client understands complex legal concepts (e.g., elements of a defense such as self-defense) that the attorney needs to explain. The client’s level of education and whether all communication occurs through an interpreter make a difference in the ease of communication as well.

3) Case Resolution

Cases resolve after trial or plea agreement. During the plea offer process, a “round robin” of discussions occur between attorney and client and attorney and prosecutor. Each time the plea offer is updated, the attorney must communicate with the client. When the client is out of custody, this may be handled via telephone or email but when the client is in custody, the attorney must go the jail each time.

If a client decides to accept a plea offer, the matter still requires additional close contact and time in completing the plea petition, gathering mitigation information, and preparing for the colloquy with the court.

If a client decides to proceed to trial, the need for continued close contact is even greater due to the amount of preparation time. At trial, the attorney must sit closer than six feet away from the client so the client can communicate with the attorney as may become necessary during the trial. The attorney and/or investigator or paralegal will likely be having close contact with the defense witnesses during the course of the trial as well.

CONCLUSION

Public defense providers are essential workers. To effectively represent clients, some of the most vulnerable people in our communities, public defense providers cannot socially distance from or limit contact with clients. Continued, close contact is required of public defense providers, paralegals, investigators and interpreters. The risk of exposure is even greater for attorneys and staff who have to enter congregate care settings like jails to represent their clients. If public

defense providers and their staff become infected, they can be vectors for spreading COVID-19 to court staff, other attorneys, clients and staff.

We understand that jail and corrections officers and other persons working at corrections facilities have been deemed priority, essential personnel by the Governor. For the same reasons public defense providers should have priority access to the vaccine. We all have close continuous contact with the same persons. In fact, failing to provide priority to public defense providers would undermine the reason for providing priority to corrections personnel. COVID-19 is not a one-way street; it is just as possible for a lawyer to give the virus to an inmate.

If the public defense capacity breaks, then the justice system breaks. We, the undersigned, urge you to prioritize criminal and juvenile defense attorneys for accelerated access to the COVID-19 vaccine.

Shaun McCrea
Executive Director
Oregon Criminal Defense Lawyers
Association



Rob Harris
President
Oregon Defense Consortia
Association



Stacy Chamberlain
Executive Director
Oregon AFSCME Council 75



Enclosure:
OPDS Letter, November 13, 2020

CC:
Constantin Severe
Dustin Buehler



November 13, 2020

To: Oregon Governor Kate Brown; Constantin Severe, Public Safety Advisor, Oregon Office of the Governor; Director Patrick Allen, Oregon Health Authority; Chief Counsel Michael Slason, Criminal Justice Division, Oregon Department of Justice and Oregon TITAN Fusion Center

From: C Lane Borg, Executive Director, Oregon Office of Public Defense Services

Re: Oregon's Vaccine Prioritization Plan

I am writing specifically to address how the State of Oregon's COVID-19 Vaccination Plan (vaccination plan) will contemplate the prioritization of Oregon's public defense providers when the state distributes a COVID-19 vaccination, upon its approval and availability.

Per the Interim Draft 1.1 draft vaccination plan dated November 6, 2020, the Oregon Health Authority (OHA) plans to, as Phase 1-A, administer initially constrained vaccine supplies available to frontline healthcare workers who are unable to work from home and face potential direct and indirect exposure to patients with COVID-19 or to related infectious materials.¹ The latter part of the vaccination plan's initial phase, Phase 1-B, shows that the OHA plans to administer limited doses of vaccines to other essential workers. Oregon's public defense providers should be considered within this Phase 1-B, non-healthcare, other essential workers category for vaccine prioritization. Additionally, the agency requests that public defense providers are considered for addition to the Oregon TITAN Fusion Center's list of Critical Workforce organizations, if public defenders are not already considered critical workforce.²

Vaccine prioritization for Oregon's public defense providers is imperative for at least three reasons: (1) public defenders must interact with some of Oregon's most vulnerable, indigent persons, many of whom are at greater risk of being in poor health under normal circumstances,³ and some of whom are or have been incarcerated

¹ Oregon Health Authority - Oregon Immunization Program, [COVID-19 Vaccination Plan: Oregon, Interim Draft 1.1](#), 42 (2020).

² Oregon Health Authority - Oregon Immunization Program, [COVID-19 Vaccination Plan: Oregon, Interim Draft 1.1](#), 40-41 (2020).

³ See generally, Trotter, et. al., [A Survey of Health Disparities, Social Determinants of Health, and Converging Morbidities in a County Jail: A Cultural-Ecological Assessment of Health Conditions in Jail Populations](#). Int. J. Environ. Res. Public Health, 2018 (explaining that, among other things, "[t]he social and physical environment of jails creates a dynamic condition in relation to general population health due to the concentrated, often short term and repeated exposure to *** infectious diseases").

Oregon Office of Public Defense Services

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recently, even despite reductions in jail populations over the last eight months, collectively making this client population at high risk for COVID-19 transmission; (2) incarcerated persons and institution staff are a group whose health and safety are at heightened risk given the inability to consistently socially distance in institutional settings, and public defenders must interact with incarcerated clients and staff to perform basic job duties; and (3) public defense providers, like jail staff, judges, court staff, prosecutors, and others, are a critical component of Oregon's criminal justice system – if providers cannot safely interact with their clients and other key system actors, a justice system already facing an extreme burden of case disposition delays, set-overs, and general backlogs, will continue to suffer. The vaccination plan specifically identifies “people who are incarcerated/detained” as a “critical population,” along with the staff working in correctional facilities, and identifies the Oregon Department of Corrections, the Oregon Youth Authority, and the Oregon State Hospital as contacts for an engagement strategy.⁴ The Office of Public Defense Services should be added as a contact for engagement to adequately plan for provision of vaccines as provider of a critical workforce element.

It is important to note that the more than 1,000 dedicated Oregonians providing trial-level public defense operate as state contractors rather than state employees. These attorneys serve indigent adults and children accused of crimes, as well as representing families in the juvenile dependency system. Public defense providers may work within a non-profit public defense office or as a private attorney contracting through a consortia or law office. While most of these providers work full-time serving indigent clients through the state's public defense contracting system, to an outside observer, they appear to be any other lawyer. Unlike civil litigators and transactional attorneys, many of whom have readily shifted to remote work during this pandemic, public defenders must continue to engage, often in person, with vulnerable clients and other critical criminal justice system actors to get the job done.

I respectfully request that Oregon's public defense state contractors are considered for Phase 1-B vaccine prioritization or, alternatively, that they are tiered with our partner justice system colleagues such as the courts, prosecutors, jail staff, and other law enforcement, who will also continue to interact with our vulnerable client population. The agency is ready and willing to assist in Oregon's engagement process for vaccine administration planning, as well.

Sincerely,



C Lane Borg
Executive Director
Oregon Office of Public Defense Services

⁴ Oregon Health Authority - Oregon Immunization Program, [COVID-19 Vaccination Plan: Oregon, Interim Draft 1.1](#), 39 (2020).