

Chair Jennifer Nash: Good morning. Thank you for joining the June 13, 2014 [sic], Oregon Public Defense Commission meeting. I'm Jennifer Nash, the chair of the commission. We're here in Bend, Oregon, and we have some commission members who are here in person and some commission members who are appearing remotely. For people who are appearing remotely, the way the room is set up, it will be difficult for me to see you when you want to speak all of the time because you are adjacent to where I'm looking. So, if you want to pipe up and say something, please just unmute yourself and feel free to speak because I might not actually see you raise your hand. And if that gets out of hand, then we'll figure out some other way, but I think that that should work for now.

We do have a quorum present, and on today's agenda are various action items related to extension of the Temporary Hourly Increase Program, approval of policy option package concepts, approval of the Supervised Practice Portfolio Examination policy, and various other policies related to preauthorized expenses and guideline expenses. We have briefing regarding policy option packages, and process reviews for accounts payable and preauthorized expenses, and we have some updates.

I've received written comment. The commission and all the commissioners have received written comment from Hamid Michael Hejazi, Olcott Thompson, Heather Busby, Amanda Hess, Dana Brandon, Bernie Brown, Laura Rittall, and Jaime Perez. And those public comments are on the commission's website under the public comment section. We have many people signed up today for in-person and virtual public comment. I have James Comstock, Olcott Thompson, Jana Baker, and Sal Peralta signed up to give in-person comment and virtual comment, Shannon Wilson, Sean Coyne, Addie Smith, Caitlin Tolleson, and Mary Goody. If I've missed your name, please, when it's the appropriate time, let me know that you've signed up for public comment. Because we have so many people who are giving public comment today, I'm going to limit it to three minutes, and I'll start with people who are appearing virtually first. So, we'll start with Shannon Wilson.

Shannon Wilson: Can you hear me okay?

Chair Jennifer Nash: Just a minute. Can you say something else? We're going to check the volume.

Shannon Wilson: Testing.

Chair Jennifer Nash: Can we turn the volume up a little bit more?

Female: What about now?

Chair Jennifer Nash: I think that's probably better. Shannon, can you say something?

Shannon Wilson: Yeah, can you hear me?

Chair Jennifer Nash: Okay, that's perfect. Go ahead.

Shannon Wilson: Okay, thank you. Good morning, Chair Nash, Vice Chair Mandiberg, Director Kampfe, and members of the commission. My name is Shannon Wilson. I'm the director here at the Public Defender of Marion County, and I'm also a member of the Public Defenders of Oregon. We represent nonprofit public defenders across the state. As you might know, about a year ago, the attorneys at my office took a stand to protect our clients' right to counsel, and in doing so, we intentionally distanced our legal practice from the outdated defense standards of the 1970s. There was some blowback, of course, and there's definitely been an adjustment in the culture here in Marion County.

Since around September 2023, four of our experienced attorneys and two investigators accepted positions with OPDC, and another two took defender positions in Washington. One joined a local juvenile consortia, and four left Oregon public defense altogether, and that's just since September. To try and fill these vacancies, we've been really aggressive with our recruitment efforts, offering up to \$20,000 in relocation assistance and an additional \$30,000 in hiring bonuses, depending on the level of the attorney experience and qualifications. Still, PDMC has not filled all the vacancies, and despite our best efforts and offers for compensation, we simply cannot compete with the salaries found either at OPDC or in another state's public defense office.

But something that we didn't foresee was because we were posting from misdemeanor to major felony-qualified to murder-qualified postings for positions, we did receive unsolicited 28 applicants interested in the Oregon Supervised Experiential Pathway to Licensure. This is without advertising anything. And I believe that the folks that are graduating from law school right now with the awakening from the Black Lives Matter movement, many recent law school graduates are passionate about social justice and wish to continue to work in social justice through Oregon's defense community and through the SPPE program.

With the Supreme Court and Oregon State Bar approval of the SPPE program, we've been gifted a large part of the solution to Oregon's ongoing shortage of public defenders. It is an incredible opportunity and one that public defenders in Marion County will take advantage of. It is an opportunity for our new practitioners to develop legal competency and attorney-client relationship skills prior to receiving full licensure, and with the same level of training and experience to a six-month licensed misdemeanor attorney, the equivalent that their experience would be once they receive licensure.

So, today, the policy in front of you will be the contract funding for the SPPE provisional licensees. It's absolutely a step in the right direction. It is well known that nonprofit law firms are where a vast majority of Oregon public defenders develop litigation competency and experience. Adding full funding for SPPE training and supervision in the future would allow SPPE employers to develop up to five licensees and ready them for public defense work every six months when they turn in the final portfolio. The more this commission invests in the workforce development in Oregon, the sooner we move past the current attorney shortage. Oregon's 50-year public defense problem will not go away overnight, but we cannot wait to use this opportunity to build a strong public defense workforce now.

We can look across the country to other states and learn from their mistakes. Even when there was funding to create new attorney positions like we're doing here in Oregon, the neglect to attract, recruit, grow, develop, and retain additional workforce was not a priority with those states, and they still have vacancies. When they made these changes 10 years ago, there's still vacancies today, hundreds of vacancies in those states. So, to finish, I want to thank the commission. I'd love to thank specifically Christine Breton and Kevin Hoopy, the workgroup participants on this policy, members of the commission, of course, and many others clearly that I cannot name, in seeing the solution provided through SPPE and submitting this proposal and policy today. Thank you.

Chair Jennifer Nash: Thank you, Ms. Wilson. Next is Sean Coyne.

Sean Coyne: Good morning. Can you all hear me?

Chair Jennifer Nash: Yes.

Sean Coyne: My name is Sean Coyne, and I'm a proud member of the Defense Investigators of Oregon. We are affiliated with the industrial workers of

the world. There is a serious problem with the way investigators are paid in the state of Oregon through OPDC. Today, I will address the timeliness of these payments. Everyone who relies on OPDC for payments has been challenged over the last several years by the increased payment delays. It is difficult for all of us, even when our lives are running smoothly. However, when unexpected expenses emerge in our lives, the issue of late payments becomes unbearable.

This past February, my father, who suffered from dementia and entered a memory care facility and was soon after hospitalized and later died. Over many months, there were a number of additional expenses related to his care and eventual death. Unfortunately because OPDC payment times have been ever-increasing, I could not rely on having money in the bank to pay these expenses. We are professionals performing important, demanding, and necessary work, and like all professionals, we deserve to be paid in a timely manner and a consistent manner, in a way that can be relied upon.

OPDC requires investigators to wait to invoice until the designated number of hours and an authorization is complete. So, I often submit billing, for example, on a 50-hour authorization that spans several months of work, and I am forced to wait months for payment. This is unacceptable for paying life's regular expenses, never mind unexpected or emergency expenses like I mentioned previously. When I started this career six years ago, payments were processed within two weeks and there were four people in the accounts payable department. Now, despite the department growing to nine people, payments take over 50 days. How can OPDC attract and retain people in this profession when it takes six to seven weeks to receive an authorization and seven to eight weeks to be paid? Other than those with independent wealth, not many people can work full-time without being paid for months on end.

The system is clearly broken, and the delays are unsustainable. Please direct accounts payable to pay investigators, paralegals, attorneys, and other defense team members in full within two weeks of invoice submission. Please direct accounts payable to automatically calculate and pay all back interest owed and to pay it promptly. Please direct accounts payable to allow investigators and other defense team members to bill along the way as attorneys do. These steps are essential to ensure that investigators and other defense team members can continue their vital work without the financial strain caused by delayed payments. Thank you, commissioners and chairperson for your time.

Chair Jennifer Nash: Thank you. Next, we have Addie Smith. Ms. Smith, can you hear me? We're ready for your public comment. All right, I'll move on to the next person, but I'll call you again. Mary Goody.

Mary Goody: Good morning, everyone. Thank you for allowing me to concur with Sean Coyne and also to concur with the materials submitted by James Comstock, and I have read his comments that he will be giving today, and I also concur with those. I'm a licensed private investigator working as a mitigation specialist. I have been so employed for almost 40 years. This is my 39th year as a mitigation specialist, and it has been a joy throughout my career to do this work. My son joined me in 2000 and together we worked cases all over the West and also federal cases. But since 2007, we have worked primarily for OPDS, although we have diversified in that time.

My son has had to leave the profession several years ago because he could not sustain his expenses and his children's lives and his own mortgage payments, car payments, with the payment times that OPDS has forced upon us. We have worked diligently since at least 2019 with members of OPDS to try to solve these payment issues and to bolster the idea that all around us here in the Pacific Northwest and Alaska, people are routinely paid \$100 an hour for investigative and mitigation work. The reality today is that if you send in an invoice on April 30th, and then you send in an invoice on May 30th, you will not be paid for the April invoices until around June 18th, which is absolutely impossible for people to function and live their lives comfortably, and it's important to know when you're going to be paid.

We have all kinds of things that come up as investigators. We must pay for records. We have to pay taxes. We have to have vehicles that work so we can get around. It's just impossible to work under those conditions. The reality is that people, not only my son, but people are leaving this profession in Oregon. People have moved. A mitigation specialist has moved to Texas, now taken a job with the federal public defender. Many have retired. And that means that those of us who have the experience and who can mentor others are not available to young people who want to learn how to do this wonderful work. I know that you'll hear from others today, and they will echo my concerns and my thoughts, and I want to thank you for allowing me to speak.

Chair Jennifer Nash: Thank you, Ms. Goody. Ms. Smith, can you hear us? Are you able to connect?

[No dialogue]

Chair Jennifer Nash: I'll try again in a little bit to call Ms. Smith. Then we'll move to our in-person public comment, and first is James Comstock.

James Comstock: All right to sit?

Chair Jennifer Nash: Sure, yes.

James Comstock: Okay, thank you. It's the habit of being the first person, not knowing where to go. Chair Nash, members of the committee, thank you. My name is James Comstock. I'm a defense investigator and a member of Defense Investigators of Oregon, part of the Industrial Workers of the World. I'm here speaking to you again, not because things have not changed since I last provided public comment, but because things have gotten worse. Our members now report payment of their invoices at 55 to 57 days. Please think about that for a moment. In a world that runs on 30-day payments for utilities, rent, credit cards, and other things, the agency is taking nearly eight weeks to pay providers.

After months of comment bringing this to the attention of the agency and the commission, payment times are the slowest that they have ever been. Some of my colleagues believe that in response to our repeated pleas, the agency has ignored us at best, and at worst is retaliating by purposefully slow paying bills. I don't know if that's true, and I hope it isn't. Having said that, we are at an utter loss. This issue can be fixed right now. If the agency would pay invoices after a very basic initial audit, doing the more extensive audit that they wish to perform after payment, invoices could be paid in as little as one week. Any overpayment could be charged to the provider. The irony is not lost on us that the agency's resistance to this may be because they are worried that any overpaid vendors would be slow to pay the agency back.

We have been told for literal years that a remedy for this was around the corner. The agency insults our goodwill, our grace, and our intelligence by continuing to tell us that they hear us, they feel our pain, and that a fix is eminent. The agency recently said in a newsletter that delays are due to unexpected staffing issues. I do not know how such a thing could be unexpected given the length of time we have been raising this issue. Saying this feels like the agency is simply recycling the same excuses. The production of a white paper on payment process is also frankly insulting. This is akin to me calling the fire department because my home is on fire, and in response, the firemen produce a white paper on response times and the effectiveness of water on a burning building.

Providers have in desperation asked the agency to comply with statute regarding interest on payments past 45 days, not because the amount of money that the agency must pay is material, but because we desperately hope that by making the agency comply with statutory obligations, things might improve. The agency has responded by saying that we can bill for the late fees on subsequent invoices. This is not in line with the statute. The agency must automatically pay any late payment interest either with the late bill or in a separate payment immediately after the late payment date has been determined. Making the provider jump through hoops to be paid a pittance a minimum of 50 days later is an insult. What are we supposed to do, charge interest on the late paid interest? The whole situation is a farce with providers as the butt of a cruel joke by the agency.

The recent newsletter implores attorneys to take cases from the unrepresented list. I myself am on several of those cases. I can personally attest to the fact that the agency has begun systematically denying funding for critical experts who have not been denied before. It is ridiculous to ask providers to defend clients on the unrepresented list and then to deny them the tools to do the job properly. Financially, this merely kicks the can down the road for the inevitable and more costly PCR and retrial. Morally, it sends clients to prison who otherwise would not have gone or who would have served a shorter sentence. An appeal or a PCR victory cannot bring back that time for our clients.

You've seen my written remarks from the last meeting, and I stand by those. We ask the commission to take immediate action to rectify the emergency that is the slow payment problem. We ask the commission to move to obligate the agency to seek funding to raise the base rate for investigation to \$75 an hour at the September Emergency Board, effective October 1, 2024. As I outlined in my written materials, we find ourselves in a place where we cannot trust the agency, and I believe that you cannot trust the agency. The commission is in place exactly for situations like this, to put a check and a balance on the power of a state government agency. We're at a place where we're desperate, and we ask ourselves what will it take to get more than thoughts and prayers that have been offered in response to our concerns? I'll be here at the conference for several days. If you're around, I'd love to talk to you about this. I regret that the public comment isn't a place where we can have a dialogue. I understand that. I would love to talk to you more about this. I'd love to talk to the agency about this. We're frustrated with the lack of engagement and the lack of change. Thank you.

Chair Jennifer Nash: Thank you, Mr. Comstock. Caitlin Tolleson? Sorry, Olcott. You're next.

Caitlin Tolleson: Good morning. I apologize, since the switch up of the public comment, my computer had logged itself out, so just give me a moment to pull it up here. Good morning, commissioners. My name is Caitlin Tolleson, and I'm a recent graduate of Willamette Law and a new SPPE licensee with Public Defenders of Marion County. I want to begin by thanking you today for the opportunity to share my thoughts with you about the new SPPE program and why it is so important to continue to invest in it. If you had asked me a year ago what kind of law I wanted to do after I graduated, I would have told you maybe transactional law.

But the sad truth was that at that point, I didn't think I belonged in law at all. I was considering other work because I was terrified of having to go through the bar exam. I was diagnosed with ADHD in 2013, and like so many others who are neurodivergent, I struggled to get through law school. I felt so defeated by the fact that although I knew the material just as well as my classmates, I struggled to get through exams. How I ended up here is a result of grit, fate, and clever persuasion. But after taking Criminal Procedure and Evidence, I discovered that I really liked it and I wanted to give it a try. I enrolled in an externship in August of 2024 with PDMC, and by December of that same year, I had made a complete 180 and decided that I wanted to practice law after all, and that I wanted to practice criminal defense.

My time at PDMC has been incredibly meaningful and eye-opening. I went from thinking that I might not be cut out for the law at all, to wanting to jump headfirst into the world of public defense. While at PDMC, I have assisted with several Measure 11 cases, researched complex legal issues, drafted countless motions, I've served as co-counsel on a bench trial where my client was ultimately acquitted, I've managed my own cases, and I've held the hands of so many of my clients as they've endured the worst days of their lives. All of this might not have been possible were it not for PDMC embracing me with open arms and for the opportunity to earn my licensure through the SPPE program.

This is a stark contrast to several of my other classmates who are now enduring bar prep. You all remember it, not only are they miserable every single day when I check in on them, but they aren't learning anything that's going to be relevant or helpful to them once they're ready to practice. When I get my results back from the bar examiners who grade my SPPE portfolio, I will be ready to hit the ground running

and will need no lead-in time to get adjusted to the rigors of your first year of practice. I will have already been acclimated.

I want to conclude by saying that I'm a proud public defender, and as a Salem native, I'm honored to serve the community in which I'm a product of. All of this, again, would not have been possible were it not for my experience with PDMC and for the opportunity to earn my law license another way. If there's nothing else that you take away from my comments this morning, I hope that it is this. By continuing to invest in SPPE, you are continuing to invest in new lawyers just like me. It's rare that we as lawyers get to choose how we teach and bring up the new generation of lawyers, and I hope that you take my thoughts into consideration today as you forge through this uncharted territory. Thank you again for allowing me to be here and for your time. If you have any questions, please feel free to come and talk to me afterwards, and I will be at the conference, and I'd be happy to share more about my experience with SPPE. Thank you very much.

Chair Jennifer Nash:

Thank you very much for your comments. Olcott Thompson?

Olcott Thompson:

Good morning, Chair Nash, Vice Chair Mandiberg, members of the commission. I'm Olcott Thompson, I am the executive director of the Marion County Association of Defenders. That's the consortium in Marion County. I have a few comments beyond my two letters that MCAD and I sent to you. The agency appears to be returning to its claim that its present contracts are not flat fee contracts. The agency has been told by providers, the Sixth Amendment Center, and others that the present contracts are flat fee contracts and are unethical.

A consortium contractor who has to pay a set monthly amount to its member attorneys, like its member attorneys, receives a set amount of money for all the cases they or the consortium and the member attorney takes. There's a flat fee for 100 cases, 200 cases, 1,000 cases, whatever number of cases that are taken. While the number of cases taken by any particular contractor or attorney may vary, each are paid a flat fee for those cases, no matter how much time or effort is put into any of those cases. The maximum MAC in the contract is treated by agency staff and the courts as the number of cases the attorney is supposed to take. Flat out, that's what you're supposed to take. You need to take more cases to get to that number. Beginning July 1 of 2025, the Legislature has said these unethical flat fee contracts need to end, at least for the private bar, either as individuals or through consortia. They need to be paid on an hourly basis.

Two years ago, in 2023, MCAD made a formal proposal to the agency to return to hourly pay. At least I think it was well thought out by MCAD, and we tried to deal with the budgetary uncertainty in a way that eliminated most of that uncertainty and had MCAD doing much of the at least initial administrative work. When we were finally able to pull response from the agency, the response was, "We don't want to have to deal with consortia." Over time, that's been very telling. As a report to the commission regarding unrepresented people indicates, Marion County has a continuing and growing problem. The number of unrepresented people keeps increasing. The public defender's office has essentially refused to take any more cases, and the MCAD lawyers continue to take as many cases as we can, but we too have limits, even if our limits are much greater than the PD's office limit.

Their own trial office has just started. As best I can tell, the agency has pulled the funding for four lawyers from the PD's office in Marion County because the PD's office could not fill their vacancy and has replaced that money with extended vacancy money. MCAD right now has almost two full-time equivalent lawyer positions, a total of four lawyers available, ready to add capacity, brand-new capacity, but OPDC refuses to fund the positions. Almost one full-time equivalent has been waiting to be funded for over two months. The only reason Marion County had few unrepresented people in custody was because the court drafted MCAD attorneys to represent the in-custody people right at arraignment.

That has changed in the last couple of weeks. Now the court is waiting six days for the agency to find a lawyer before they either draft an MCAD attorney or release the person. Both can and do harm the client. I know of one person who was in custody, probably still is, with a parole hold and a new DUII. They got released on the new DUII after six days because the agency hadn't found an attorney for him. Yet he remained in custody on the parole hold, eliminating his ability to get credit for that time in custody on the DUII, and probably resolved the DUII before he got released on the parole hold. Right now, the agency is not solving the unrepresented problem. It is making it worse. Refusing to fund new capacity, paying contractors even though they can't add attorneys, and delaying payment of those who are trying to get paid directly from the agency, and now shorting them on interest on late payments, is limiting the number of attorneys who can be representing the presently unrepresented people. The latest report from the agency says as of June 7th, the agency was processing bills submitted April 18th. That's 50 days before they're processing stuff.

This sign is a courtesy of a Marion County judge. I saw it in his chambers yesterday and asked if I could take a picture of it and he said, "Take the sign." It represents not only his sentiments, but the sentiments of much, if not all of his Marion County colleagues. Like Mr. Comstock, I'm happy to discuss anything at any time with any member of the commission. I'll be at the conference. Thank you for your work, but please get the agency to do timely work. Thank you.

Chair Jennifer Nash:

Thank you. Thank you, Mr. Thompson. Jana Baker?

Jana Baker:

Good morning commissioners and thank you for giving me time to speak today. My name is Jana Baker and I'm a current SPPE applicant with the Public Defender in Marion County. I'm here to tell you about my journey, which led me to the SPPE program and the importance behind improving contract funding and policies for SPPE licensees. I was a first-generation non-traditional student. When I was 23 years old, I decided I wanted to be an attorney. I worked my way from community college to Willamette Law School where I graduated 26 days ago. I grew up in a world that did not value education, and for the past seven years, I felt the uphill battle of breaking the mold I come from. For the last seven years, I was afraid and anxious of passing the bar exam and always worried it would keep me from reaching my dream of being an attorney. If you would have asked me a year ago, I would have told you that I would never be in public defense. I would have sworn I would stay with a private firm.

However, talking to many of my mentors and being presented with an opportunity to work at PDMC, I decided to explore what that role looked like. If you would have asked me six months ago if I would be an SPPE applicant, I would have told you absolutely not. However, after exploring that pathway and what it would look like and learning the support I had behind me from PDMC, I decided it was the right option. I now know that all the things fell together in my life with a greater plan than I ever dreamed for myself, and working at PDMC during the last year of my law school career has afforded me with the best experiential experience that I could have asked for. Since the end of February, I've had the opportunity to assist in four Measure 11 trials which have all resulted in acquittals. I've written countless successful motions and have learned how to holistically represent clients. As I sit here in front of you 26 days post-graduation, I have more experience than some attorneys. I've learned the rules of evidence, how to think on your feet, and how to apply and argue the law. All things I know which have prepared me to be an attorney.

As I was preparing for today's remarks, I reflected on the accomplishments since my graduation. I reflected on both outcomes students are faced with, the SPPE or the bar. In my 26 days post-graduation, instead of leaving to study for the bar, I've argued for a bail reduction, wrote, argued, and won a motion to suppress, completed my first solo misdemeanor trial and acquitted my client, counseled clients through plea negotiations, and engaged with counteroffers. I've resolved cases for two clients, I've taken on three new clients, and most importantly, I've been able to maintain my clients' trust while continuously representing them without interruption. I think of my counterpart at the DA's office, who I should have tried my last case with; however, instead she chose to take the bar. The week prior to trial, that case bounced between three district attorneys. Neither choice is wrong, but choosing SPPE at Pathway, I was able to remain client-centered and dedicated to their uninterrupted defense.

I know I wouldn't be sitting here today without the support of PDMC. This commission has the opportunity to make this possible for so many more criminal defense attorneys. I'm asking each of you to believe in the needs of this role, the people who are going to make great attorneys, but struggle answering a tricky, timed, multiple-choice question. I challenge each commissioner to take a step toward changing criminal defense and fully approving contract funding and policies for SPPE licensees. I brought along some business cards, and we'll also be here all weekend at the conference if anybody would like to talk further. Thank you very much.

Chair Jennifer Nash:

Thank you. All right, let's try Ms. Smith. Addie Smith, are you available for public comment? All right, well, we will move on. Sal Peralta?

Salvador Peralta:

Good morning, Chair Nash and members of the commission. Thank you for being here today and taking the time to hear my comments. My name is Sal Peralta. I'm the executive director of the Oregon Defense Consortia Association, here today representing over 200 private bar attorneys and consortia that hold public defense contracts with the state. That's about a third of the state's total public defense workforce. I wanted to express our appreciation to the Legislature and to this board for the extension of the Temporary Hourly Increase Program and would like to second the comments made today about the SPPE program, the workforce development approach by the staff at PDMC, and also the comments by Mr. Comstock and his associates.

For the last six months, I have come to the commission and asked the board to slow down the agency's proposed transition of public defense

away from annual contracting with the private bar in 2025, and the elimination of consortia in 2027, and instead focus on core services like billing, addressing the unrepresented crisis, and completing the transition into the executive branch. Part of the reason for that is that Oregon cannot afford the direction that the agency has been heading. In the last eight years, OPDC's budget has doubled from 317 million to 618 million. Staffing has increased from 76 to 157, and despite this, the unrepresented crisis has grown from 700 cases in January 2022 to nearly 3,000 cases today, despite the fact that there are fewer appointments being made. So, four times the problem, fewer appointments. Vendor payments have worsened. They're now averaging over 40 days, actually approaching 50 days now. We're told that this is a temporary staffing issue, but payments have been in that range for two to three years compared to less than 10 days in 2017. Most other states are making payments in less than 10 days, not Oregon. If the agency struggles this much with handling \$16 million in hourly accounts, how will it manage an additional 84 million? Why is the agency trying to recreate this wheel? We know now that the agency's current direction is based on a series of false assumptions.

For example, since January 2022, it's overestimated by 71% the time needed to handle cases compared to the national average workloads adopted by this commission. This has influenced contracting, policy requests, and the treatment of the contract workforce, leading to lawyers being treated by this agency as though they were behaving unethically for hitting the contracted caseload. The workload estimates your commission adopted last month make it clear that Oregon needs fewer attorneys than previously believed by the agency. That should influence your policy requests for secondary staffing. The plan outlined in this packet will hugely increase the cost of public defense with a one-to-one staff/attorney ratio, leaving less money for attorney compensation while doing very little to reduce attorney caseload.

We're drowning in 3 feet of water, not 10 feet. Parts of the state could stay afloat if the agency enforced minimum performance standards and incentivized above contract performance. The crisis we're in is partly due to a lack of attorneys. This has been exacerbated by OPDC not enforcing adequate standards and absorbing public defense dollars internally or moving them towards lower performing and less cost-effective defense models. Our view, therefore, is that much of the current transition and staff expansion should be paused and re-evaluated by the governor and her staff after the agency moves into the executive branch, where we believe it would be held more accountable for performance. In the meantime, policy options approved by the

commission should focus on improving vendor payment turnaround time, attorney recruitment, and compensating the workforce adequately to handle additional cases as recommended by the Ninth Circuit panel decision. Thank you for your consideration.

Chair Jennifer Nash: Thank you. All right, I believe that concludes public comment. Is there anyone who signed up for public comment who I did not call? All right, thank you. We will move on to our next item, after I count really quickly. Okay, just wanted to make sure we still have quorum. All right, move on to our next item, which is extension of the Temporary Hourly Increase Program. Ms. Kampfe?

Jessica Kampfe: Thank you, Chair Nash, Vice Chair Mandiberg, members of the commission. My name is Jessica Kampfe, executive director. Back in April, this commission directed the agency to make a request to the Legislature to fund the extension of the temporary increased hourly program, which pays increased hourly rates for lawyers and investigators to accept appointment on cases where people are in custody and unrepresented. The agency did bring that request to the Legislature, and we appeared in front of the May Emergency Board with that request. The Legislature authorized the agency to continue the program through December 31st of 2024. It did not at that time allocate the funding for the program, but it did say that we could continue to operate the program and then return to the Emergency Board in September to ask for the funding to support the expenses that we incur between now and then. So, at this time, we're coming back to the commission with an action item to implement that legislative direction by extending the temporary increased hourly program through December 31st of 2024.

Chair Jennifer Nash: Thank you. Does anyone have any questions? Any commissioners have questions about that?

Tom Lininger: Hi Chair Nash, this is Tom Lininger. Did I get your attention?

Chair Jennifer Nash: Yes, thank you.

Tom Lininger: I hope I did it the right way. So, I very much support the extension of the Temporary Hourly Increase Program. I'm troubled by the irony that we're not getting this money out the door to vendors, and it's been so many successive meetings in which we've heard really compelling public comment and read really compelling public comment about the bottleneck with staffing. And I just wanted to flag this concern at the outset of the meeting. I've been emailing back and forth with Brook,

Commissioner Reinhard, and I wonder if there's a chance to address that issue at some point in today's agenda, when that might be, could we explore the possibility of classifying some vendors as trusted based on their past reliable performance and do maybe quicker disbursement for such people or an automatic disbursement? But I just feel like increasing the hourly rate while we have such inertia with actually disbursing the payments is not alone sufficient to address the concerns we want to address. So, I wonder if Chair Nash could share some thoughts about how we might address that issue today. It seems time sensitive.

Chair Jennifer Nash: Yes, thank you. And that item actually is on our agenda for later this morning to discuss that issue. The agency provided in our commission materials a process map for both the preauthorized expense process and the accounts payable process. And the idea is to have a discussion about that and where the bottlenecks might be and what we might be able to do about that. So, that item is on our agenda for this morning. And thank you for your comments. All right. With that, do I have a motion to approve the proposed... Oh, I'm sorry.

Brook Reinhard: Chair Nash.

Chair Jennifer Nash: Yes.

Brook Reinhard: Good morning. Two things. First, Commissioner Addie Smith, I was just texting her. She was not the Addie Smith that was...

[Crosstalk 00:42:59]

Chair Jennifer Nash: Yes.

Brook Reinhard: I just wanted to make that clear for the record.

Chair Jennifer Nash: Yeah.

Brook Reinhard: It was very confusing.

Chair Jennifer Nash: I will mention that. There is coincidentally a person who wanted to make public comment who has the same name as one of our commissioners. And oh, she's here now. All right. Well, let's back up then and have public comment from Addie Smith who is not our Commissioner Addie Smith who wanted to make public comment. Ms. Smith, you are muted. You can unmute at any time and begin your public comment.

Addie Smith: Good morning.

Brook Reinhard: Morning.

Chair Jennifer Nash: Good morning.

Addie Smith: I apologize for the delay. I'm actually in New York and messed up the time. So, I apologize for any delay I may have caused. I'm thankful that I got the opportunity to speak before the council today or this board. I'm really concerned about the direction that the Oregon Public Defense Services is headed. I understand that by 2027, they are set to receive over a billion dollars in funding. And I don't know exactly where that money is going to be going, so I would appreciate it if I could get a copy of the budget for this over \$1.3 billion I believe you are set to receive. I'd also like a copy of the budget of the funding that you are currently receiving.

One of the reasons that I'm asking for a copy of this budget is because I've seen a lot of the attorneys, the public defenders that are contracted by the Oregon Public Defense Services. And one of the biggest complaints that they have is that they are not receiving enough money financially personally to represent the people that they have been contracted to represent. And I have received two contracts. I'm going to ask now for Eric Deitrick to please provide me with Melissa Garcia's contract. And from what I have seen in the monies that they have received, the attorneys that I have requested so far, and their investigators, have received enough money to more than adequately, more than base level represent defendants in the state of Oregon.

I live in Oregon. I live in Portland. And I'm truly, truly disgusted by the representation that these attorneys are providing for these defendants. And I'm going to be very, very specific here. I have sent a lot of the people – Eric Deitrick for one, Mona Riesterer for another, Justice Martha Stevens...or Martha L. Walters I think it's her name, the Supreme Court Justice for the state of Oregon. And I think I've also sent Jessica Kampfe videos of my son, where he broke up with a girl back in 2020, and she was banging on his door demanding that he let her in. She was kicking at the door. She was headbutting the door. She was jiggling the handle. And she called the police and said that he had assaulted her when he had not touched her. She was just angry that he wouldn't let her in his apartment.

Washington County Circuit Court is, I think by far, more racist than any system I have seen across this United States. And I have seen a lot because I work in multifamily housing. Washington County Circuit Court justices, specifically Kathleen Proctor, and Judge Menchaca, and Judge Thompson, and Judge Bucher, these judges can be sent home. But for some reason, and I'm going to tell you the reason, Rachel Mortimer, who is the executive director for the Commission on Judicial Performance, refuses to admonish them, reprimand them, or force them to step down for violating the law. These judges openly violate the law more than SCOTUS, and they do so without fear of retribution, they do so in the face of the voters, and they aren't sent home. You have prosecutors in Washington County who are not afraid, and I don't know how much more money they are making than the public defenders, but whatever it is, if that's what it takes for the public defenders to do their job, what they're doing, what these district attorneys are doing in Washington County, is violating the law. And they have the support of the judges to do that.

So, are the public defenders from Oregon Public Defense Services saying they need more money to be able to lie, to be able to counter, to say that we aren't getting paid enough to force these judges to face the fact that they are violating the law? What is it going to take? Because young Black people like my dark-skinned, college-educated, college-graduate son are suffering under the hands of these people. So, are you saying that you need more money to fight it because you're scared? Or what exactly are these Oregon Public Defense Services attorneys who are contracted by you guys saying? Because right now, I don't see why we would pay them more money because they aren't doing anything with the money that they have. They aren't calling witnesses, they aren't allowing people to testify, they aren't investigating. And they really are not holding the district attorney and the judges in Washington County accountable when they violate the law. The law is so basic, and when you see them violate the law, it is disgusting.

So, who is going to do something about it? Is it going to take me voting for Trump? Is it going to take me showing you all, showing you all what it feels like for us to lose our rights by making sure that white women lose their rights, gays lose their rights? If Black people are the only people that are going to get to lose rights under Democratic leadership, then everybody needs to lose their right. So, if you all want Trump, if you all...

[Crosstalk 00:49:43]

Addie Smith: Okay, if you all want a Trump presidency, and all the people he's going to put in place, and Alito is going to retire, say less. But if my son continues to be hurt because your attorney that you have contracted refused to do their job, not a problem. We can all play the game.

Chair Jennifer Nash: Thank you for your comments. Thank you.

Addie Smith: Thank you.

Chair Jennifer Nash: All right. Thank you very much. We were at the point, I believe, backing up, where I'm seeking a motion to approve the Temporary Hourly Increase Program from July 1st, 2024, to December 31st, 2024, pursuant to the policy changes that were included on our commission material.

Bob Selander: So moved.

Chair Jennifer Nash: Thank you. Is there a second?

Vice-Chair Susan Mandiberg: Second.

Chair Jennifer Nash: Well, I guess we have to do a roll call for the people on the video.

Brook Reinhard: Chair Nash, before you do a roll call...

Chair Jennifer Nash: Yes.

Brook Reinhard: I had one other thing I was trying to ask.

Chair Jennifer Nash: Yes, I'm sorry.

Brook Reinhard: It's all right. Similar to what Commissioner Lininger brought up on payment delays to providers, my concern here about the temporary hourly program is that you have attorneys who are doing work, and then after 30 days, they're invoicing the agency, and it's still taking 45 to 55 days to be paid. Similar to what Commissioner Lininger said, I wonder if there's a way to have a trusted provider who's defined as someone who's previously had invoices without significant corrections, that the agency just takes their invoice and pays them without further auditing. Particularly with attorneys, we know who they are, we know what their bar numbers are. If somebody's misstating an invoice, it's easy to... Not easy. It's easier to call the money back. So, I just wanted to put that up for consideration. I obviously can't vote. I have no objection to the continued temporary hourly program; I've made

statements about it previously. I think it makes sense, given the crisis we're in. I just wanted to put that out there.

Chair Jennifer Nash: Thank you. And again, we are going to have a full discussion about that issue later this morning, and I appreciate your comments. They're very appropriate. All right. So, we need a roll call vote for the people who are on video, and probably for everyone.

Eric Deitrick: Chair Nash, there was a motion. Was there a second?

Chair Jennifer Nash: Yes.

Eric Deitrick: Okay. Then to the motion, Chair Nash?

Chair Jennifer Nash: Yes.

Eric Deitrick: Commissioner Mandiberg?

Vice-Chair Susan Mandiberg: Yes.

Eric Deitrick: Commissioner Selander?

Bob Selander: Yes.

Eric Deitrick: Commissioner Harris?

Rob Harris: Yes.

Eric Deitrick: Commissioner Lininger?

Tom Lininger: Yes.

Eric Deitrick: And is Commissioner Addie Smith present or not?

Chair Jennifer Nash: She's not.

Eric Deitrick: Is Commissioner Buckley?

Peter Buckley: Yes.

Eric Deitrick: Commissioner Harvey or Taylor or Smith...

Chair Jennifer Nash: Thank you. Thank you. Motion passes unanimously. Next, I'm going to move up on our agenda to discussion and action item of the Supervised

Practice Portfolio Examination policy. Ms. Flowers? And that is, for those of you who are following along in the audience, page 108 of our commission material.

Shannon Flowers:

Thank you. Good morning, Chair Nash, Vice Chair Mandiberg, members of the commission. I'm Shannon Flowers, child support and development manager with the agency. I have with me this morning Christine Breton, who is criminal resource counsel in the Child Support and Development Division. And you have before you a policy that has already been discussed some this morning by some of our public commenters. It's a proposal for a policy for contract funding for the bar's SPPE, Supervised Practice Portfolio Examination provisional licensees. I am actually going to turn it over to Ms. Breton, who led a workgroup in connection with our role definitions and qualifications standards for course support staff roles, that we'll talk about later in this meeting today. But part of what that workgroup looked at was this program and how the agency might provide funding for that, what parameters should be put on to complement the bar's program. So, with that, I will turn it over to Ms. Breton.

Christine Breton:

Hi. Good morning, Christine Breton, resource counsel. Thank you for just... I won't take too much time going through this. There's already been such lovely testimony about the SPPE program this morning. I almost feel like I should just step aside and let that stand, but I'll talk very briefly about the program and the suggested policy and [Inaudible 00:55:01]. There's more extensive materials that talk about the requirements for a program like that. But briefly, the Supervised Provisional Practice Examination, or SPPE, if I can ever remember what the words stand for, is a new alternative to the bar exam, essentially. Beginning this year, a law graduate or even an out-of-state attorney can have the option of either sitting for the bar exam or they can participate in almost an apprenticeship. And with the way the hours work out, both people could be admitted to the bar at the same time. Roughly, for the July bar, that's usually roughly October is when the swearing-in is. So, [Inaudible 00:55:45] SPPE or someone taking the bar exam get sworn in about the same time, but with very different experiences.

As you can see or hear from the comment this morning, this, you can tell, will be a really effective recruitment and training tool for public defense. Basically, being able to use the bar's oversight of this program, and the supervision that is required for them to participate successfully in SPPE, we have a way to bring in already very motivated law graduates who are specifically interested in public defense and have them enter

into the bar with significant training already when they enter the bar, compared to some people who have sat for the bar exam.

As Shannon Wilson mentioned in their testimony this morning, there is nationwide interest. The OPDC's website has an employment interest card on our job school site so that individuals are able to contact and say, "I'm interested, I'm either a law student or an attorney here or elsewhere interested in this sort of work." And we have gotten a lot of nationwide interest through our website asking about opportunities through SPPE [Inaudible 00:56:49] program. No other state has a program like this, and so I think it's going to be a really excellent recruiting tool nationwide once we are able to understand it better and develop a thoughtful program and support it in public defense.

We are also having a lot of contractors reach out to OPDC and ask if they are able to fill vacancies on their contract with somebody who has provisional license under this program versus a bar attorney. We are seeing this especially in areas that have recruitment barriers already. Rural coastal areas are the places that have a lot of need, have shortages of attorneys, but have difficulties recruiting. And so if they can have motivated new law graduates who are excited to come to public defense and work in their office and come up in their jurisdiction, they're essentially hoping to train and create their bar attorneys [Distortion 00:57:43] jurisdictions that often had unsuccessful attorney recruitments to fill their vacancies.

So, a brief overview of what the program requires. In order to apply to be a part of this program, you have to have graduated from an ABA-accredited law school with certain coursework having been done during your law school time, or if you haven't, you have to work through the equivalence, and need to pass the state bar character and fitness process, which is typically a part that goes along with sitting for the bar exam. And you also have to have the commitment of a qualified employer with a qualified supervising attorney, and those additional applications and requirements for employers and supervising attorneys that are required to be accepted into this program, and them agreeing to the obligations of the oversight and supervision and training that's required to pass this program.

The general expectations of this program are 675 hours of documented work. That could include legal work, it can include hours just given over to the program in other ways for training, some things like that. At the end of your completed hours, you're to submit, or whenever you are prepared to after completing the hours, you submit a portfolio of eight

pieces of written work, as well as some evidence of certain more client work, casework negotiations, things like that. And there's additional requirements around professional responsibility, diversity, equity, and inclusion, other training requirements by the bar that you must complete prior to being able to apply for admission into the bar.

So, this program already has fairly robust expectations and requirements and oversight, and so in trying to support this pipeline or this opportunity coming to public defense, what we really thought about and brought to the workgroup that we convened was what are the guardrails or the expectations that might be necessary, on top of what the bar already has set out to make sure that folks entering public defense are doing this...that we have the proper guardrails on it for folks doing court-appointed work. And we also are approaching this for the very first year. It's a bit of a pilot, limited program. It's not expected to be the robust full rollout of SPPE. Really, we need to learn more about how this is going to work inside public defense.

The bar also is going through its first iteration of accepting these portfolios and grading and all of that, and so we're seeing this first year as an opportunity on a smaller scale to learn about this program and develop, for maybe next year or in the future, a more robust way to support it. So, at this point, the proposal is to limit licensees to fill in full-time 1.0 FTE vacancies. This is a limitation because we see a lot of places that do not do full-time, or a lot of attorneys are not completely full-time. However, at this point, it's really unclear what a non-full-time court-appointed FTE participant would look like. So, we put this limitation on it so that we could understand and control the work that a licensee would be doing. We've put a timeline on this for one year to complete the program. The bar actually allows up to three years to complete this program because there's a range of 10 to 40 hours a week you might be doing on this.

If you are able to do all of your hours and get all of the work that you need to do as quickly as possible, it is possible to complete this program in as little as one. A lot of folks are very motivated to do that. However, in speaking with the workgroup and speaking with folks that help develop and are working on the implementation of this with the bar, it might just take longer to and know where you're starting at the beginning of your programming to get to a place where you are getting the case assignments for getting the work or getting the experience that you need to complete your portfolio. And so the one-year deadline was put on that in consideration of that. Which should be sufficient time for them to complete their program, and hopefully they'll be completing it

even faster if they are able to. We want to give space to the realities of training and supervision needs to also allow someone to complete the program.

Finally, there are requirements, of supervising attorneys in terms of the number of years they've been barred and their standing with the bar in terms of disciplinary history. On top of that, we were layering in our expectations for their qualification with OPDC to make sure that if someone is supervising a new criminal attorney, they are at least major felony qualified and experienced on the criminal side. Same thing with delinquency or juvenile and dependency. We want to make sure someone is qualified in that area to work at a certain level to supervise a new licensee working in that area.

The last piece I'll add is just I put in here just an awareness on the limitations of a provisional licensee's appearance. They are largely under the same restrictions as certified law students, where they're required to get written client consent before they take on the representation of somebody. There are limitations of when they're allowed to appear alone versus with a supervising attorney. They cannot appear alone over the phone [Inaudible 01:03:44] equipment, and we have our own requirements that they're not allowed to appear with a client without the supervising attorney present before we've had an opportunity to qualify them to do the work. So, that's a quick overview of the program and the policy and a little bit of the thoughts behind it. You heard from your testimony this morning what a valuable and amazing tool it's going to be to bring really passionate new attorneys into public defense, and it's really exciting that we have an opportunity to do that here in Oregon.

Chair Jennifer Nash:

Thank you. Commissioner Prozanski.

Sen. Floyd Prozanski:

Thank you. I wonder if you could give us some perspective if we go forward with this, that wouldn't mean that they would be limited to only those who will do full FTA 1.0 how many people we may be leaving behind. In other words, not being able to participate. My question here to why wouldn't we want to have more coming in that's going to fill the gap? Even if we just took it and made it half time, 0.5, you'd have an even break. You could move it from one year to two years for them to come in. I'm wondering if you can give us some insight about who we may be missing with this proposal.

Christine Breton:

I think of this we can speak I guess a bit anecdotally, the contractors that have reached out the most are largely nonprofit public defense

offices, probably because they already have a bit of the training and sort of infrastructure in their offices. But that also could be because other individuals just haven't thought to reach out, that they haven't thought it's an option. So, it's a little bit unknown of how many other places might be reaching out. The thought process behind this was a 1.0 full-time provisional licensee is a very known quantity to get this policy and get a pilot going quickly to have something to support graduates from this year.

If someone's going to be 0.5, 0.75, 0.8 public defense, it's going to take a lot more thought to think, well, how does that impact their hours, their portfolio? Are we going to want a certain number of their written work to be public defense versus private work they get done? Are we going to make sure a certain number of hours is court-appointed versus not? Does it have to be just criminal? What if they're doing trust and estates work? It became just a lot of unknowns that would require a lot longer and a lot more knowledge about how this program is going to work before we would be able to roll it out. That's why this is contemplated as a small first year out sort of program, so that we can, in a controlled situation, understand how it's going to work so that we can then roll it out more broadly.

Vice-Chair Susan Mandiberg: I think it's a great program. I am really happy to see an alternative to the rite of passage that's the bar exam. What have you all thought about in terms of the time that the supervising lawyer will be taking to supervise as opposed to directly representing clients? How is that getting balanced out in this?

Christine Breton: It will depend. I think if someone is being hosted in one of the nonprofit offices, there is already a certain amount of supervision and training money rolled into those offices. But there's, of course, discrepancy because there's parts of the state [Inaudible 01:07:32] that have no barriers to recruitment that don't have nonprofit offices. And so I think that's another aspect of it that is going to need to be looked at and understood in terms of what are the limitations and what are the needs in terms of supervision in this first year as this program gets started, to understand more about what are the time constraints and what is the ratio or what have you for supervision.

There is room in the way that a contractor contracts with or pays their SPPE licensee. The SPPE rule is that a licensee must be paid on par with a new graduate, not necessarily someone is new to the bar, but on the level of a law clerk and might have the same salary and benefits as any other recent law graduate. And so there is room in terms of, as there

always is in the money that is paid from OPDC to a contractor for their employee to decide how are they going to split up salary for the licensee up until they're admitted to the bar and how much will be maybe given to the supervisor for their time that is going to be spent on the licensee. So, there's a flexibility there in terms of how the contractors themselves can decide how to financially support that.

Vice-Chair Susan Mandiberg: So, that's great. I'm glad to hear that you thought about it. There's some flexibility. Does the pilot program involve the lawyers who are doing the supervision, whether they're nonprofits or whether they're [Inaudible 01:09:21], reporting back to OPDC about how many hours they're spending on supervision, what those hours involve? It seems to me that if it's a pilot program, that kind of information, not just about what the SPPE person is doing, but what the supervisors are doing, would be really important to figure out how to move on after the pilot.

Shannon Flowers: Absolutely. So, there will be, we'll be working with the data and research team in our CAP Division to really drill down on what kind of reporting there should be, at what intervals, what that looks like, so that we can learn more about the program, make sure we understand what's happening, and continue to modify this policy or this program within public defense.

Vice-Chair Susan Mandiberg: And just one more question, is there a way to assure that the way that this information is gathered is not going to further delay payments to these lawyers and providers who are participating in this budget?

Shannon Flowers: Because the policy contemplates funding through a contract, those payments are happening at regular intervals each month. So, the concerns about slow payments and those sorts of things should not impact the population of folks, the contractors, and the participants in this program. They should be just getting... It's part of their regular contract payment.

Vice-Chair Susan Mandiberg: So, it's not contractors who are complaining about late payments? No, it's not, okay, thank you.

Chair Jennifer Nash: Mr. Harris.

Rob Harris: Thank you. I'm going to follow up on Senator Prozanski's line, I think, earlier. And I understand why maybe the first year would be just full-time people at a firm, a law firm, that already has supervision. But I think looking a little more broadly, that's not every county in the state, right? And that's not where the biggest need may arise for having

people. And I would really strongly suggest to look at a pilot project that either puts it in a consortia model...or law firm model, or even [Inaudible 01:11:27] model. Because you could have a lawyer in Baker City that wants to work there, lean on the private work if they could do it, but maybe they don't have a contract. Does the agency say it'll bill more contracts? You guys are all hourly. How do we get these folks? How do we get the SPPE people set up on a panel so that we get an hourly rate? Maybe it's reduced hourly rate. I don't know. Oh, that was my other question. If you're filling a contractor with an SPPE individual, says they pay them the SPPE rate, is that less than a lawyer rate? Is that contemplated?

Shannon Flowers: No. At this point, the funding for the SPPE provisional licensing on a contract would be that attorney one rate. It's the misdemeanor level. And again, contractors can distribute that funding as they see fit. So, they can divvy it up differently.

Rob Harris: Which is a little problem because if you're going to pay them at the law clerk rate, that law firm is going to book a bunch of extra money, right?

Shannon Flowers: Well, and so that's where I think there is a guardrail within the SPPE, as far as the bar is concerned because part of their program is that SPPE provisional licensees made to be paid commensurate, I think. I can't remember the exact language. But similarly to how a new attorney would be.

Rob Harris: That's not what I heard earlier, but that's fine. So, will the SPPE lawyer be expected to take the same caseload as a regular barred lawyer who's in that office or not? Because if it's not, you're paying the lawyer rate, you're getting less bang for your buck. Which I understand, it's a training thing, but that's just a question.

Christine Breton: So, I'll take the last part first. The less bang for your buck, this is somebody who's a provisional licensee with limited practice ability versus a fully licensed attorney. I will say that so far, the areas that are asking to hire someone who's a licensee are places that have not been able to recruit attorneys. And so they want to bring in somebody and train them and bring them up themselves. And that's, of course, not going to always be true across the board. But we haven't seen so far a place where someone says, "I have all these attorneys that I really want to bring... I really want to bring a licensee that requires oversight and can't actually take on the full cases that an attorney could.

In terms of caseload, it was a very involved discussion on how to approach a caseload. The number of unknowns that are in this, including how long someone might be in the program. Because someone could complete it in four or five months, or someone might take eight, nine months to complete this program. It makes it hard to put on a strict number of cases because they might be putting different numbers of hours into legal work versus training [Inaudible 01:14:05]. At this point, I believe they'll just be subject to the misdemeanor MAC that has always been calculated at the maximum.

And I think that also takes into consideration the very different places people are when they may be entering this program. Someone may be coming in like Janet Baker, who's been CLS-ing and ready to already have a trial, right, in her first couple weeks of being [Inaudible 01:14:29]. Someone might have just graduated and never stepped foot in a courtroom. And so their capabilities are going to be very different. And so I think that's going to be another thing that we're going to be looking at through reporting, understanding [Inaudible 01:14:40] we transition into new workloads in the future, how to contemplate that [Inaudible 01:14:46].

Chair Jennifer Nash:

Thank you, Commissioner Smith.

Addie Smith:

Thank you. I'm so thrilled to get to speak on this as the chair of the Oregon Board of Bar Examiners. We're really excited that this is something that's being contemplated and that you guys are so on top of it. The program opened up May 15th, so I'm really, really glad to see. I know as we were drafting the program and working through it, public defense was a large consideration. And I just want to shout out to Brook Reinhard, another commissioner, who spent a lot of time in meetings working on this program for this reason in particular. So, I just really want to commend OPDC and the commission for looking at this, for its excitement around it. There's a great article in the ABA Journal today about it, if people want to read a little bit more.

But that said, I do want to follow up on some of the questions, and I think a lot of this makes sense as a first year. There are a lot of unknowns certainly as we roll it out on the bar examiner side. We are also sort of hunting in certain ways and trying to get it right as best as possible and learn from what happens in this coming year. I want to just reiterate that it'll be really important to figure out how to pilot this in not nonprofit settings. I think the nonprofit setting is well suited to this because they have some supervision baked in, because they have sort of FTE equivalents very easy to calculate and ready. But I don't want us

to miss the opportunity that others have already spoken to, which is to find sort of the farther flung areas of our state where this program could really help fill some important gaps. It sounds like you guys are contemplating that. The report is going to provide us with information about the time, supervision, the time for students, how long it's taking people to complete it, etc. But I do want us to keep thinking as it rolls out about how we can move away from some of these requirements that are going to really lock it into our metro areas or to our nonprofits, so it's something everyone can take advantage of. But great work on this, and I just couldn't be more excited about it.

Chair Jennifer Nash:

Thank you. I have a couple of comments and questions. First, you know what? Not many people who don't know me well know this. I was a non-traditional student. When I went to law school, I had three children, and they were seven, four, and one, not quite one when I started law school. When I graduated, they were of course three years older than that. And if I had had this opportunity, I passed the bar on my first try, but if I had had this opportunity, I would not have taken the bar because I needed to make money. I had over \$100,000 in student loan debt at that time in the '90s, and I had a family I needed to support. And it was risky not working for the summer and then hoping that I was going to be able to pass an exam that was my entire future. And after I took the bar exam, I was like, "If I didn't pass this, I quit."

It was so awful, the stress of taking the bar exam. And if I could have had a job right away where I earned money, earned my way, demonstrated my workability and gotten my bar license, I would have done that. It's a fantastic thing and thank you, Brook, and thank you, Addie, for all of your work in making this happen. I think it's a wonderful program and it's really, really great for public defense and the crisis that we're in now. I wonder if it doesn't make sense for us as a commission to review this quarterly or every six months the same way we are with our other policies so that we can make revisions or refine it as we go along and figure out how things are working out? So if we want to expand it, we can do that. If we figure out something isn't working, we can adjust that. So, that's kind of my thought is that maybe we ought to consider reviewing this pretty regularly. I wonder what other commissioners think about that.

Vice-Chair Susan Mandiberg:

I agree with everything you said, including how horrible the bar exam was.

[Laughter]

Vice-Chair Susan Mandiberg: I was sure I had flunked it.

Chair Jennifer Nash: Yeah, me too. [Laughter]

Vice-Chair Susan Mandiberg: But I think a quarterly review is probably a really good idea. I agree with that.

Chair Jennifer Nash: Are there any other... Oh, Commissioner Lininger, thank you.

Tom Lininger: Thank you, Chair Nash. I really appreciate your comments and the other comments people have made. And I'm very enthusiastic about supporting the SPPE proposal before us, and I do like the idea of periodic review every quarter, it's a good idea. I've noticed with my current position at a law school that we're actually drawing new applicants to Oregon law schools because this pathway seems to be viable, and I do think those new applicants favor Oregon over other states because it seems to present a more likely path to a public defense practice. So, this is going to be important for our work to increase the pipeline of new grads coming in.

I do hear a concern from time to time that this would undermine the importance of the bar exam, and I just wanted to share my two cents about that. I don't think many students at the University of Oregon are favoring the SPPE in lieu of the bar exam. I think they recognize the bar exam, if you can pass it, does provide some greater versatility, might allow you to go to different states. But I did want to flag for commissioners who have the concern that Chair Nash mentioned, we're going to hear later today a proposal from OCDLA to provide some scholarships for people who are going to take the bar. And I think that would really address one of the concerns that Chair Nash just mentioned, which is the huge economic burden of giving up two months in the summer to study for the bar and level the playing field a bit that way. But I will definitely vote to approve this proposal and recognize we may need to tweak it going forward. I appreciate the comments about the importance of extending these opportunities outside the metro areas and maybe the FTE minimum is something we'd want to revisit. Thanks to everyone involved with this.

Chair Jennifer Nash: Thank you. Is there a motion to adopt the contract funding proposal for provisional licensees with a review quarterly?

Vice-Chair Susan Mandiberg: I'll move that, yes.

Chair Jennifer Nash: And a second?

Male: I'll second.

Chair Jennifer Nash: All right.

Eric Deitrick: Chair Nash?

Chair Jennifer Nash: Yes.

Eric Deitrick: Commissioner Mandiberg?

Vice-Chair Susan Mandiberg: Yes.

Eric Deitrick: Commissioner Selander?

Bob Selander: Yes.

Eric Deitrick: Commissioner Harris?

Rob Harris: Yes.

Eric Deitrick: Commissioner Lininger?

Tom Lininger: Yes.

Eric Deitrick: Commissioner Smith?

Addie Smith: Yes.

Eric Deitrick: Is Commissioner Buckley?

Peter Buckley: Yes.

Chair Jennifer Nash: Thank you. Motion passes. All right. Let's...

Female: If I could, just on a quick personal note, this is my last OPDC meeting, or this meeting is my last day with the agency of this week, so I really want to thank you all for the work that you do.

[Crosstalk 01:22:10]

[Laughter]

Female: And to the extent that it allows me to do some really great things that I'm proud of... [Distortion 01:22:16]

Chair Jennifer Nash: Dr. Kampfe, would you like to move up the POP discussion, or do you think it's more appropriate to do updates before we do that?

Jessica Kampfe: I think it might make sense to do the updates so you kind of know what we're addressing with the POPs.

Chair Jennifer Nash: Understood. All right, let's move on to the budget update.

Jessica Kampfe: And Ralph Amador is going to join us to walk us through the slides on the budget.

Ralph Amador: Good morning, Ralph Amador for the commission, waiting for the slides to come up. Actually, it's just one slide. What you have before you is a [Inaudible 01:23:32] budget update for the commission ending in the month of April of 2024. You can see that... Oh, you can't see.

Jessica Kampfe: Mona, can you move the bar too there so you can see the bottom line?

Ralph Amador: The variance? So, as you can see, it looks like we have a good amount of savings right now, but that's when we're just halfway through, not even halfway through the biennium yet, and we have explanations for a lot of that. We'll start at the top with Administrative Services, and you'll see there's a variance of about \$4.6 million. That variance equates to savings relating to FCMS. We have money there that has not been spent and is still accumulating. That should grow a little bit because we have projections out there, and as the actions are met, but we hope to start eroding that in the coming months as we get a [Inaudible 01:24:36] and start using some of that funding.

The next one down is the Adult Trial Division, and you'll see that there appears to be a variance there. That is representative, the majority of that is representative to vacancy savings associated with the state trial offices. We got funding for that that's supposed to start in... hiring is supposed to start in July of this year, and there's also money in there for the recriminalization funding that we got in there. So, again, that variance should go down as we progress through the biennium, as we hire people and start bringing contracts on in the near future to address the 110 recriminalization money.

The Appellate Division is showing some positive variance. That again should be eroded as we fill whatever vacancies are there, and as we

transition through the second year of the biennium, and they spend some of their S&S money, services and supply money in the second year. CAP...Audit, and Performance Division is performing about as what we'd like to do. Again, that may increase a variance there as we have vacancies coming aboard in the near future.

Court Mandated Expenses, you see a lot of money there. That right there represents the investments that have been put into court-mandated expenses when we pay the hourly attorneys or stuff like that. And those bills, when they come, they'll come in fast when the cases are closed. So, we've put an investment there that should erode throughout the end of the year. And the importance is that you'll see in the POP presentation there's a continuation of money for the next biennium, so that when we get to the next biennium, we'll push those funds forward so we can continue to pay those bills when they're connected to cases.

Executive Division is performing about just as we'd like to see it do. There's some vacancy savings there, and then there's some money for services [Inaudible 01:26:48] contracts and such that haven't come in yet. Trial Division... I'm sorry, Juvenile Trial Division is at a significant disadvantage right now, and we're watching that one as we go through. This is what we pay the juvenile attorneys who are on contracts. It's a little bit over right now, and we're watching that as we go through. When we rebalanced our money to move money into the Adult Trial Division, we took that down pretty low, but that was using numbers from November. There have been additions throughout the last five months that have taken it there. But again, we're watching that, and we may have to address that in the future E Board with a rebalance or a request.

Preauthorized Expenditures shows a variance, and this is where we pay all of the investigators and everything else. We're trying to do our best to forecast along with what comes in. This is a sketchy one because we don't know what's coming and when it's coming in because as cases end and as people get billed, we pay those invoices. But right now, it looks to be performing as well as it should be. Parent Child Representation Program, that's taken it right down to the wire, but again, those are contracts, and there's not a lot of variance in those as we keep going. Special Programs, Contracts, and Distributions, that's where we pay discovery and some other things in there. And again, that's performing as we'd like it to perform. That creates our positive variance at the end, but again, it should erode as time goes by.

Chair Jennifer Nash: I have a question. Does any of the [Distortion 01:28:31] the Executive Division money include SPA money or not? Because it's been authorized but not allocated, so it's not in the budget, right? That's what I'm asking.

Ralph Amador: Chair Nash, we don't have any SPA money in here.

Chair Jennifer Nash: Okay.

Ralph Amador: It sits with the Legislature until we request it.

Chair Jennifer Nash: Okay.

Jessica Kampfe: I think she means when we requested SPA money in the May E Board, our investments from the May Emergency Board reflected in this budget.

Ralph Amador: Oh, if that's the question, yes. All the money that we got in May E Board... No, not in May E Board, in the concessions there. We haven't put money from the May E Board in yet.

Chair Jennifer Nash: Got it.

Ralph Amador: We just got our notice to do that.

Brook Reinhard: Mr. Amador, would it be possible in future updates to include a percentage that shows how over or under we are? Because I find this really hard to conceptualize against the two-year fiscal budget.

Ralph Amador: Commissioner Reinhard, yes, sir. Are you talking about the [Inaudible 01:29:30] percentage?

Brook Reinhard: Yeah, just percentage of expected up or down.

Ralph Amador: Yes, I can add that, I think. Also pull out a report that says that. Yeah, it's a little sketchy because that works really well when you divide payments up for 24 months.

Brook Reinhard: Yeah, it's going to be weird sometimes, but it would help me conceptualize.

Ralph Amador: Yes, sir. [

Brook Reinhard: Thank you.

Rob Harris: I have a question. Maybe this is more for the executive director, but it's come up on this slide here. The legislative authorized budget for PCRCP is 56 million, right? Do you know what the percentage of total juvenile cases PCRCP covers in this state? Executive director, you might have the answer to that.

Jessica Kampfe: I don't. Shannon Flowers might have the answer to that. I believe it's 10 counties in the state are PCRCP counties, but I don't know the percentage of caseload that is covered by PCRCP.

Shannon Flowers: For the record, Shannon Flowers, child support and development manager. I don't know the percentage off the top of my head. I can come back with that at the next meeting if you would like, but Director Kampfe is correct. It's 10 counties. There's like all on the eastern side...or western side of the state.

Rob Harris: Do you know how many clients that includes?

Shannon Flowers: I don't.

Rob Harris: Okay, I'll follow up later.

[Crosstalk 01:30:53]

Shannon Flowers: Okay, all right.

Rob Harris: Thank you.

Vice-Chair Susan Mandiberg: How much of the variance, for example, in court-mandated expenses, how much of [Inaudible 01:31:07] variance is due to bills not being paid yet? There's this backlog in payments that we've been hearing about.

Ralph Amador: Commissioner Mandiberg, I really can't answer that because they come in as they come in. We can't...

Vice-Chair Susan Mandiberg: Well, they come in as they come in, but they're not evidently paid as they come in. So, how much of the variance is due to the lag between the bill coming in and the bill getting paid?

Ralph Amador: I can't really answer that. I can do a calculation and get back to you.

Vice-Chair Susan Mandiberg: That would be great.

Ralph Amador: Figure that out and see what that says.

[Crosstalk 01:31:45]

Jessica Kampfe: ...what's the cost of things that have been invoiced but not yet paid?

Vice-Chair Susan Mandiberg: Yeah.

Chair Jennifer Nash: I think the broader point is we have \$14 million more than we paid out, but a portion of that is due to lag time for payment. That's really the, yeah.

Jessica Kampfe: Yeah, there's a number of lag factors that go in there. So, currently our preauthorized expense intake is working on June 3rd intakes. So, there's a little bit of a lag there between June 3rd and June 13th for about 10 days to get an authorization on a case right now. Then once somebody gets the authorization, they go and do the work. And so, there's a bunch of work that's being done that hasn't yet been invoiced. So, that's the first big category of lag time. We don't know what work is being done that hasn't been invoiced yet. Then once we get the invoice, currently accounts payable is finishing bills from April 25th, so they're at 49 days. So, we've got a 49-day delay right now on the accounts payable. And that's the second portion of the lag time...

[Crosstalk 01:33:04]

Vice-Chair Susan Mandiberg: That's the one I want to know about. So, yes, if we could get that information, that would be great. Thank you.

Chair Jennifer Nash: Do we have... Well, let me ask a different. Where, if anywhere, is the amount of preauthorized expenses shown on the budget? Or is it not at all? So, in other words, you authorize in the month of April \$200,000 worth of preauthorized expenses, but those aren't billed until sometime later. Is there a place where you compare this is what we've authorized, so this is therefore what we can roughly expect to pay at some point in time. And then, of course, later on, you compare that to what was actually paid. But is that number of what's been authorized, where does that show up in the budget?

Jessica Kampfe: That is quite the paper tiger. Because of some historic agency policies around how long you had to bill, we were getting bills that were more than two years. We'd get our invoice more than two years after the authorization. There's a lot of times where you may authorize an expert witness and then the case resolves much faster than anybody expected, and that expert witness ends up not being needed on the case. But

we're not always notified that the expert witness is not needed on the case. So, if we were to look at all of the preauthorization, it would very much change what that picture looks like to show a huge deficit. And over multiple bienniums probably [Inaudible 01:34:56].

Chair Jennifer Nash:

Well, I think I can talk to you more about that offline. That makes sense, but I have about 25 other questions which aren't really relevant right now. So, all right. Are there other questions about the budget? I need to see commissioners now. Are there any questions from any commissioners about the budget update? All right. Thank you very much. Let's move on to the legislative update, Director Kampfe.

Jessica Kampfe:

Thank you, and a moment pulling up the slides. Our government relations manager is not able to be here today, so I'm going to muscle through the legislative update with you all. So, Mona, if you can go to the next slide. Thank you. In May, the commission appeared in front of the Legislature for May Legislative Days. We were invited to appear both at the Joint Judiciary Committee as well as in front of Public Safety Ways and Means Committee. During the Joint Legislative Committee, we presented our Comprehensive Public Defense Report. This presentation focused on how OPDC is building its financial forecasts based on workloads. Overall, the presentation seemed informative to the committee, and Commissioner Prozanski was present for that presentation.

We did receive questions about the national workload standard and the cost of implementing them was something that we received a number of questions around. We also heard some frustrations around the potential cost of the proposed system when there have already been significant legislative investments and the unrepresented persons crisis persists. This is sort of a continuation of the long-term versus the short-term conversations that we've been having for quite a while. We have been invited to return in December to this committee with an updated report. This, you all will remember, was a report that you all saw for the first time and had significant concerns that the agency had committed the commission to decisions that the commission had not yet made.

And so we revised the report to make it much more preliminary in our presentation to the Legislature. Between now and December, we'll be working with the Legislative Subcommittee to develop and to periodically bring before the commission the decisions that need to be made by the commission in order to facilitate the December report. That December report will be due in November and therefore the final

decisions on it will have to be made by the commission in October, so you can expect to see that back this fall.

We presented to the Ways and Means Public Safety Subcommittee and our presentation there included both reports as well as financial asks. So, starting with the reports, we presented a report on the executive branch transition. We did hear concerns from the Legislature about whether or not we are on track on that executive branch transition. I do believe that we are on track, although we do still have risks around IT and procurement. There was a focus by the subcommittee on untangling our organizational chart and the steps that the agency needs to take to make sure that they have a lot of clarity around our organizational chart.

We have recently made some significant progress on this, and we've been partnering with the Legislative Fiscal Office to make sure that our budget and organizational structure are aligned. I expect that we are going to be able to get this sorted in the next few weeks, and that is in part because we have some legislative processes, budgeting processes that have due dates coming up called Package 60. It is the way you kind of clean up agency organizational budget structures, and that component of building our current service level budget is kind of doing a [Distortion 01:39:39] closely to get that moving.

We also will be going back in front of the Emergency Board in September to talk with them about requests for procurement positions, and we're working closely with the Legislative Fiscal Office in addressing the Package 60 things to also highlight exactly what that request needs to be in order to make sure that we're making an informed request and giving the Legislature all of the information that they would need to evaluate whether or not that is advisable. And it was clear from the Public Safety Subcommittee that on the executive transition they want us to work more closely with the governor's office. We do meet with the governor's staff once a week, but a real desire to see a more close collaboration.

And this coincides with right around the time we were there, we got the letter from the governor that is attached in your commission reading materials talking about the executive transition and the unrepresented persons crisis. They received our report on our financial case management system. I perceived that to be well received. They received our report on the quality management plan. We did get feedback that that quality management plan lacked specifics that we needed to build out our programs, policies, and procedures. There was a note that the

data in the plan was better than it has been, that that's an area where we're improving. And there was also some conversation around when it comes to things like the unrepresented crisis, that while public defense has some responsibility, it's not something that we can address in a vacuum, and that there is responsibility that also lies with district attorneys and judges.

On our remediation plan, that seemed to be well received by the Legislature, and in conjunction with the conversations around our organizational chart it was noted that hiring strong and competent staff is essential. On moving from the reports to the investments, Mona, can you go to the next slide? Do you have one more slide? Oh, that was the slide. Okay, thank you. Oh, it is, it is on here, it's on the right-hand side. Sorry, I missed it. So, we had two requests that were in front of the Emergency Board. One was to extend the Temporary Hourly Increase Program. We discussed that earlier along with the commission's vote. The other was for information and technology positions. We had asked for four positions. The Legislature authorized two of the four, and we are expecting to return in September to clarify our requests around remaining positions. Next slide, Mona. Thank you.

We did receive new reports that we're going to be responsible for. So, the Public Safety Subcommittee of Ways and Means would like to see us back in October to report on the governor's unrepresented plan. And we will be bringing that in front of the Legislative Subcommittee later this month and then back in front of this body in July. We are back in front of the Legislature in September Legislative Days for an update on our financial case management service. We are also back for an update on the unrepresented persons problem, and we will be there with the Oregon Judicial Department. I think that might be it. Yeah, thank you.

Chair Jennifer Nash:

All right, thank you. Are there any questions regarding the legislative update? All right, thank you. Moving on to the update regarding the unrepresented persons in Oregon courts, and this is an Oregon Judicial Department report, correct, that you're going to discuss?

Jessica Kampfe:

There is an Oregon Judicial Department report that's part of your materials. They are not here to present on that today. We will be having representatives from the Oregon Judicial Department join us for our commission meeting in July, and I think at a regular cadence thereafter. So, you will be able to hear directly from circuit court judges starting in July. I do have a slide presentation based on our data to just give you an update on the unrepresented persons. And I believe our research analyst, Mr. Noone, is present as well if you all have detailed questions

because he is the data guy that can give you the detailed answers. So, I'll walk through the overview with you.

Chair Jennifer Nash: Hold on, is there any way that we can see commissioners at the same time? So, if other commissioners on video have questions, I can see them.

Jessica Kampfe: And I do see that Mr. Noone has joined us and has his video on.

Chair Jennifer Nash: Perfect.

Jessica Kampfe: So, if we have commission questions for him, I'm sure he'll be happy to answer them. So, this is our overall THIP overview so that you can see at a very high level what types of cases we're spending the money on, what the billing is looking like on those case types, what communities are being served, who's doing the work, and what type of costs we have in terms of are we paying primarily for lawyers? The THIP attorney money is 16.6 million, or the investigators which is 3.7 million. I will note, and this goes to Commissioner Mandiberg's question from earlier, this money reflects bills that have been paid. So, there may be more money invoiced that hasn't been paid, and there may be preauthorized expenses for... In fact, there certainly are preauthorized expenses and invoices that aren't being counted in this. So, this is checks that we have cut.

Rob Harris: Is this just this biennium or is this since we started it? Because I think it started it before this biennium. Is that right?

Chair Jennifer Nash: We started it before this biennium. Harry, do you know the answer to that question? Is this the total program cost?

Harry Noone: Good morning, Director Kampfe. Yes. The costs presented here are measured since the very beginning of the program. So since August 2nd, 2022.

Jessica Kampfe: Do folks have other questions on the THIP overview? Okay, we can move to the next slide. In the Oregon Judicial Department's report, they called out counties that were at an elevated risk, I believe, is what they called it, that were growing more severe. So, we wanted to break out for you all. Mona, can I have you slide the commissioners over to the other side of the view?

Chair Jennifer Nash: How about the bottom?

Jessica Kampfe: Or the bottom, yeah. But we wanted to break out for you all the counties that were called out by the Oregon Judicial Department's report as the counties that were identified as the most severe counties. And so we actually haven't seen a ton of change in the in-custody populations within these counties. There does continue to be a significant amount of growth in the out-of-custody pre-trial population, but less so in the in-custody populations. We are seeing significant growth in a handful of counties right now. If Mona, you could move to the next slide. So, the counties that we are, in fact, seeing the most growth are Deschutes, Coos, Klamath, and Clatsop counties. These are all counties where our public defense contracting is really fragile, in terms of just a single person leaving public defense is enough to create a crisis.

In Deschutes County, we saw six public defenders change positions within a six-week period, and five of them left public defense altogether. One moved from one provider to another provider. That change of six lawyers was enough to create for the first time an unrepresented persons problem in Deschutes County. I had an opportunity to meet with the presiding judge, the district attorney, and one of our providers in Deschutes County yesterday along with Chair Nash to talk with them a bit about what's happening on the ground and how the agency can help support this county. It is my understanding that they are actively recruiting to fill those vacancies and have filled all but two of them at this point in time, although with misdemeanor qualified lawyers replacing experienced lawyers. Commissioner Reinhard?

Brook Reinhard: Yeah, Director Kampfe, I assume this will be addressed later, but is it likely that the state, DOJ not us, will be appealing Betschart, the case? And if not, will that impact the unrepresented in custody because of the seven-day limitation going back in place?

Jessica Kampfe: Thank you. So, I'd be happy to talk about Betschart. Do I have a Betschart slide? So, with regard to Betschart, I can't say whether or not the state is going to appeal. We aren't a party to the case.

Brook Reinhard: Right.

Chair Jennifer Nash: So, they'll make that decision between the parties of the case, and I don't have the answer to that question. But we are working right now really closely with the Oregon Judicial Department to align our understanding of what cases are subject to the Betschart ruling, so what people are subject to the Betschart ruling. We are working with them

under our data share agreement to be able to see and query the back-end Odyssey data to see who's been in custody for seven days, and then putting in those controls around not a murder case, firing your lawyer, those types of controls for the carve-outs.

Now those folks will be at the top of our priority list in terms of identifying counsel for them first, both with our targeted THIP as well as asking contacted providers to take appointment on those cases first. And we are working with the Oregon Judicial Department to do this because we want the presiding judges and the agency to have the same list of people that we're working off of, and there's an ability that we're working on for people to be able to make changes to the list. So, if a judge in a courtroom sees somebody's in custody and they're not on the list, they could ask the Oregon Judicial Department to add that person to the list so that we're really keeping track of who exactly is subject to the order.

Brook Reinhard: And that OJD dashboard, is it current within 24 hours?

Jessica Kampfe: I think Harry is probably a better person to talk about dashboards than me.

Brook Reinhard: Sorry for the details, I hope you're not derailed [Inaudible 01:51:52].

Jessica Kampfe: Okay.

Harry Noone: Just for the record, Harry Noone, I'm a research analyst here at OPDC. The way the unrepresented dashboard works is that what you see on any given day is basically a data refresh from 9:00 a.m. that morning when they scrape the jail rosters around the state. So, it is as current as 9:00 a.m. that day or 9:00 a.m. the previous day if you're looking at it before 9:00 a.m. Did that answer your question? I'm sorry.

[No dialogue]

Female: Can you hear us now?

Peter Buckley: Yes, you're back on.

Female: All right, thank you.

Chair Jennifer Nash: We were muted unfortunately.

Jessica Kampfe:

As I was saying, all of these counties are counties where our contracts were very close to the need in the county. So, it's just a very fragile system in these counties. So, the loss of even a single provider is going to cause a spike in the unrepresented. If we can move to the next slide. This is an update for folks on the intake form and the Oregon Judicial Department data sharing, and we started to talk about this a little bit. We were in front of you all a month or two ago talking about the pilot program for our new intake form, and we shared some process mapping. That pilot program has been going well. We've been getting mostly really positive feedback from those that are using the pilot program, and we're looking at expanding the use of it.

So, initially, we're looking at an additional handful of counties that would be interested in voluntarily participating in the expanded pilot program. We're also sending a group of our staff to the statewide trial court administrators meeting in July to talk with the statewide trial board administrators about how to use the new intake form, what benefits there might be, get questions, do some preliminary training. And we're hopeful that it will end up being widely adopted because it's been very successful so far. The form is limited in its use for in-custody, unrepresented persons, and we really need to limit it to that in order to make it a useful tool. Because if we start putting all unrepresented persons on it, the list gets too big for us to be able to do that kind of targeted prioritization. And I think we already talked about the Betschart piece of that. Harry, have I missed anything that you wanted to make sure that we covered with the commission about the update on the intake form and the Oregon Judicial Department data sharing?

Harry Noone:

I'd just like to share that we had the opportunity to meet with some of the data staff from the state court administrator's office about two weeks ago, and they came to our office for about three hours. And I feel like we've been very fortunate to have their assistance and partnership with accessing this data, which can create efficiencies for us to respond to these cases. And so I think they've really shown an earnestness to help us access this information and understand it as well. So, that's all I would add to this.

Rob Harris:

I don't know if you're done with your presentation yet.

Jessica Kampfe:

I've got one more slide but go ahead.

[Crosstalk 01:56:53]

Jessica Kampfe: It's on something different. Okay. I did want to give you all a brief update on how our trial offices are impacting the unrepresented persons numbers. And so here you can see where our trial offices, our state trial offices have taken cases so far, and how many cases they are providing representation to people on. So, the state trial level offices mandate is to take unrepresented persons cases as our top priority, and that has been our targeted population. In total, we've accepted appointment on 292 cases. You can see the areas in which we have accepted representation so far. So, you can start to see some of the impact that those offices are making on the unrepresented persons population, and I think that brings me to my thank you slide.

Rob Harris: So, thank you. Appreciate that. That's great information. I think every time we get a new presentation from the agency, I think we get a little more in detail and depth, and that's very helpful to me, at least for my evaluation of this. One question I have, and I've talked to legislators who are concerned about, and I'm sure you have, what are we getting for all the investments we've made over the last two years, how can we still have this unrepresented crisis? How many lawyers, I guess I'll call them MAC, just full-time lawyers, have you added since July 1, has the agency added?

Chair Jennifer Nash: How much MAC have we added?

Rob Harris: Yeah. In adult criminal now, not the juveniles. Because this is where the crisis is primarily, right?

Jessica Kampfe: Yeah. So, Commissioner Harris, this is a tricky question to answer because the universe of how many lawyers that we've added is broken up into a few different categories. So, there's the contracted MAC. We could answer a question about how much contracted MAC have we added since July. And then the next question is, how many lawyers are taking cases hourly? Because they weren't taking those hourly cases prior to July. And then the last bucket is how many state employees have we added? And then the further sort of complication of that is MAC is prorated. So, depending on when we added the MAC, that would impact how much of a caseload that individual had taken. So, it's not an easy question to give a real fast answer to. Is your question how much total MAC have we added since July?

Rob Harris: Yeah. How much additional capacity, I guess. Yes. Total capacity. Because I know I hear this, like we've added scores of millions of dollars, but it's getting worse, the unrepresented crisis. It seems like it should be going down if we're adding lawyers and new filings are not going up.

These are basic questions that I get from my local legislators when I talk a little about this.

Jessica Kampfe:

Yeah. So, I think we've largely maintained. In terms of the numbers, we're getting worse very significantly. And then with the additional investments, we've been able to really plateau that so that it is not continuing to get significantly worse, with the exception of a handful of counties where we've seen one or a handful of lawyers leave and a crisis spike in an acute type of way. So, I think one thing that we're clearly getting from those investments is that we have stemmed the growth of that crisis. And then the next question is how are we doing digging out? We can see from things like the amount of time people spent in custody, about the worst of that waiting for lawyers was around 33 days to identify counsel. Now it's about 12 days to identify counsel.

So, we are making those types of improvements. So, even if the total number hasn't come down, the amount of time people are waiting for a lawyer is getting reduced, specifically for the in-custody population. I'd be happy to get back with you with an answer around how much total capacity have we increased because it is more complicated than just how much contracted capacity have we increased.

Rob Harris:

I agree. I agree. And the 11 lawyers that are working in the two or three I guess now offices, state trial offices, three, were all 11 working as of December? Because I saw some numbers December through June.

Jessica Kampfe:

And I believe Aaron Jeffers is here, I think, if you wouldn't mind coming up. Aaron Jeffers is the chief defender of our trial offices, and he's been the fellow who's been hiring all those folks.

Aaron Jeffers:

Thanks. Director Kampfe, Chair Harris. So, the offices started on December 18th with the paralegal and legal secretary, and we had one attorney who was on rotation internally from OPDC who transferred from the trial support division to taking active cases. And then the first new attorney came on December 19th, so the day after. So, in 2023, we really had two basically attorneys that started, and since then the others have filled. The last attorney that we have hired down in Medford to fill the last senior deputy position down there doesn't start until July 1st. So, we still have one that's going to start on July 1st. But it's been December, January, February, March, all along the way, we have April. One of them just started last week. They've been brought in from Idaho, a senior defender over there. So, it's been in stages. But two of them have been there basically the entire time and the rest have come in stages throughout these months.

Rob Harris: Thank you. And I guess the last just comment I would make for this presentation on the unrepresented crisis is appreciate the work of bringing people in setting up the state offices. You guys are keeping your hours, right?

Aaron Jeffers: Yes.

Rob Harris: That's going to get us a lot of good data. But there's obviously, with the governor's letter, comments by folks in Legislature. The federal judicial branch, obviously, is very concerned about the unrepresented crisis. It's hard to add enough qualified people to fix that in the next 90 days, maybe in the next six months. Isn't the only way to really fix this to work down the numbers, at least temporarily, have lawyers just take more cases, the current lawyers? Because you tap down on the hourly people and just really dig down into different providers and see if there's any way that they'd be willing to take a few more cases.

When COVID hit, they put up tents in the parking lots, and they put people in the hallways. They didn't just say, "We have 300 beds in this hospital, we're not taking more than 300 beds." Now, they knew it was a temporary thing. They didn't set these tents up permanently. They didn't permanently put people in there. But at least for a while, they thought as doctors, their professional responsibility, and the Hippocratic Oath require them to take more patients than they were really able to take under normal circumstances. I don't think they felt it violated the ethical obligations; They thought it was their responsibility. I guess I would just put out there that I think it's our responsibility as a commission of lawyers to do this work, to maybe stretch ourselves, maybe work a little bit harder, maybe work a few more hours, take a few more cases.

Let's get this number down, let's get people represented. And while that may not be the ideal ethical paradigm that we would like to do, is that the provider's responsibility to do that? Because that seems to be the only way we're going to work this unrepresented number down within a reasonable amount of time. I'm not saying everyone should take 20 more cases, but at least... And maybe you're doing it. Talking to individual providers in these crisis counties or neighboring crisis counties and see if they can take a few more cases to get this number down. And if there's a budget, to pay them more because they're going to have to pay overtime to their lawyers and their staff and everything. Maybe we need to find the money to do that as well.

So, I'm just throwing that out there as a way to resolve this and get this number down quicker. Because I think you've tapped out the people on the hourly rate. We're getting people quickly in, I know, at the new levels, recent graduates, but the people who graduated now are going to need months before they pass the bar and they're sworn in. And it seems to me the only way to do that is put up those tents and the beds with the COVID patients in the hallways, and let's get this done. That's my comment.

Chair Jennifer Nash:

Senator Prozanski, ask.

Sen. Floyd Prozanski:

I just want to follow up. I just need a reminder, on the slide that showed where we're putting people and taking cases on the trial level. Jackson County, of course, is the number one. Are there other providers besides [Inaudible 02:06:18] there? I'm just trying to figure out. I know there's an onslaught, but it sounds like we're making some improvement there. But I'm just wondering, balancing, are we picking up many more cases than the other providers in that county?

Jessica Kampfe:

We're a smaller entity in Jackson County than the other providers. So, there's three provider types in Jackson County. There is a consortia, there is a nonprofit public defender's office out there, as well as a state office. Our state office has three lawyers in it, so it's the smallest of the three entities. Aaron, I don't know if you can provide any additional information about Jackson County.

Aaron Jeffers:

What I can say, first of all, we have the responsibility for more than just Jackson County in our office because we have Douglas County and Klamath as well. We have two current attorneys, one that's going to start July 1st. I can tell you the two attorneys have taken all the cases that they can handle.

Sen. Floyd Prozanski:

So, the numbers we've got up there wasn't just exclusively cases in Jackson County, it was the three counties? Okay.

Aaron Jeffers:

Yes, Douglas County and Klamath. Each of them have cases in all places, but the vast majority are, and I think should be in Jackson County. It's more efficient for them to stay in Jackson County, and that's where the largest numbers are as well.

Jessica Kampfe:

We are looking at adding additional staff to these offices, so with the passage of House Bill 4002, there was additional public defense resources that was added to these counties. I think you saw that reflected in the Adult Trial Division variance, with position authority for

those comes online on July 1st, so we're looking at hiring more lawyers starting on July 1st.

Chair Jennifer Nash: Yes, Commissioner Selander?

Bob Selander: Director Kampfe, I concur with a lot of what Commissioner Harris said, and as I look at the small picture that you're pointing out, it looks great, but what I hear you saying is it could be a lot worse. I'm looking at the Judicial Department figures. 1,552 felonies have been unrepresented. We are at the highest point we've been since September 1st of 2022. If it went up, went down, it's going back up. The mandate from the Legislature in 151.216 is the commission shall establish a public defense system that is consistent with the Oregon and federal constitution. We're not doing that. We currently, as of June 1st, have 3,210 unrepresented individuals. I hear comments...in the comments that were written that said district attorneys should concentrate on who they're prosecuting. Not that we shouldn't prosecute. We should look to the Legislature and decriminalize a bunch of things.

I guess my question is, are we getting anywhere? And based on your last comments, I thought all the prior comments were we didn't have enough attorneys, and that's why we were trying to figure out where to get more attorneys. Now you've just said we have more money, so we can go out and hire more attorneys. So, I'm assuming it's a money problem and it's a Legislature problem. If they simply give us more money, we can hire the attorneys, and rather than having a graph that goes up from 2022, we can have a graph that goes down. So, my question is, what's it going to take to solve the unrepresented problem or at least get a grasp on it? Because from April 1st, 2023, we are no further ahead as of June 1st when we were there.

Jessica Kampfe: Thank you for the question, Commissioner Selander, and I wish it was such a simple answer as, "Just give us more monies," or "Just hire more lawyers." I think maybe at the outset of this problem, there were a lot of folks in the state that thought that the answer could be as simple as that. That would have been really great. I think that the answer is that it's complicated. It's a complex problem and an entrenched problem, and it stems from a model of delivering public defense that doesn't work. So, for a very long time we had the paper case model for public defense delivery and so lawyers got paid a flat rate for every case that they took. And the flat rate was really low. It maybe was like \$350 for a felony case, and it didn't matter if you pled your client guilty of the first time you met them or you took the case to trial, you got your \$350.

Well, that's not a sustainable amount of money to pay a lawyer. So, lawyers were incentivized by the state to take as many cases as they could possibly take in order to make a living wage. And we came to a reckoning around that system not providing effective representation for individuals, that it was the constructive denial of counsel or constructive Sixth Amendment violation. And so the state for the first time adopted caseload standards, maximum caseload standards for how many cases a lawyer could take a year. And that is in conjunction with national best practices. It's something that we see as 1 of the 10 principles of public defense from the American Bar Association. And once the state put those caseload standards in place, maximum caseload standards, it revealed the scope of the problem, that we really didn't have enough lawyers to meet the need in Oregon. And we started trying to work on that by adding more lawyers into the system. But we were still working with a caseload model and not a workload model, so we were only accounting for the new cases that were coming in, and we weren't accounting for the work that was already on people's desks.

And so we have this big backlog of work that people carry over with them from one contract to another contract, and they're still getting more cases coming on. So, the long-term dig out of this problem is the work that the commission is currently doing to adopt the workload model for Oregon. That is ultimately what the fix is going to be, is moving us from this annualized caseload to a true workload model and investing in the types of supports that the commission is going to take up today around having investigators and paralegals and legal secretaries and case managers as part of the defense team.

In the short term, the programs that we have seen be the most effective at targeting the problem has been increasing the hourly rates and being able to bring in lawyers that will go to a jurisdiction that has an immediate problem with those increased hourly rates. Bringing in more lawyers under contract has helped significantly. A lot of those contract lawyers take people off the unrepresented list and prevent them from going on it in the first place. There have also been a number of programs that have been done to address backlog in counties that have had a backlog. Those have had marginal success if you don't continue to have an ongoing unrepresented problem. So, if you had an acute problem caused by turnover, a bit of backlog, running a specialty court type of thing to clear out the backlog can be an effective tool, and we've seen that need in a number of counties. Our Legislative Subcommittee is going to take up the answer to this exact question at the end of this month as we work on a comprehensive response to the governor's

letter, and then we'll be bringing that plan back in front of the commission in July.

Bob Selander: So, I guess my I understand your answer – it's complicated. It's complicated that you can't pay investigators in a timely manner and the mandate of the Legislature was immense that you were given – solve the current problem, change the system, and solve the future problem. But given what you've said, the complications, when would you expect we're going to get a handle on the unrepresented?

Jessica Kampfe: I don't have a top of my head answer for you with that question.

Bob Selander: A year? Two years? Are we just should we stop looking at this and saying it could be worse, it could be worse, it could be worse, and then suddenly it's going to be better?

Jessica Kampfe: I think we have to continue to work at incremental progress on it and that there is a real urgency to address this issue and it needs to continue to be a top priority for the commission.

Bob Selander: Thank you. We now have a Ninth Circuit Court that says seven days people are going to be released given exceptions, and that doesn't solve anything, they're still charged with a crime, there's still all these rights they're not being given. There are all the prejudices that go along with being accused of a crime, not being able to go into court and present your case. There are all the collateral cases, the victims who under Oregon law have a right to a speedy trial to be enforced by the district attorney. That's not being done. All that's going on. All I'm asking is at what point do you expect to get a handle on this?

Jessica Kampfe: Well, I think I've given the best answer to that question that I can. We've got a six-year plan for us to be able to rebuild our public defense system into something that is sustainable and meets the needs for all Oregonians. So, I think the big picture is it'll take us the amount of time it takes us to implement that plan, although there are certainly higher risk areas and areas that could be prioritized within that bigger picture to keep in mind.

Bob Selander: I don't want to put words in your mouth – so for six years we're going to be continuing with a substantial unrepresented population and all the collateral consequences of that?

Chair Jennifer Nash: I mean, I think the issue really comes down to we're always in the same position of receiving a certain amount of money and then figuring out

what we could do with it. So, I mean, one of the things that Director Kampfe hasn't talked about that that we know is a huge contributing factor to this is because we had this unsustainable model for public defense for so long, we've had people leave in droves. And so you've got to be able to have the workload model in place so that people can sustain the work who want to do the work. I mean, I think the Supervised Practice Portfolio is fantastic. It's going to have a lot of people coming into the system who might not otherwise do that. But if we don't give them a workload model and a caseload model that's sustainable, they'll leave and go to civil practices as soon as they have two years of trial practice under their belt, and they'll go make some a large amount of money in some civil firm. So, those people want to do the work, so we have to make them be able to do the work [Inaudible 02:18:24].

Bob Selander: I agree with all those things, and I agree with Commissioner Harris when he says can we look at people and what they're doing now and ask if they can take some more cases, not force them.

Chair Jennifer Nash: Well, and they can do that. So, every one of those lawyers who are not in a nonprofit public defender's office or in a statewide office can take cases under the THIP program for people who are in custody if they choose to do that and be paid for the most serious cases \$200 an hour. There's nothing preventing them from doing that now if they say they have the ethical capacity to do that. So, conscripting them? My personal opinion is no. That's not something that we should be doing. Absolutely not. That's how we got into this problem and half a lawyer is no lawyer. You're violating a person's Sixth Amendment.

In fact, in my opinion, it's worse to give them a lawyer who's overburdened because it gives the appearance that you're providing constitutional representation when you're not. And if I were a person who were charged with a crime, I would rather sit and wait for a lawyer who can take my case – and I realize this is easy for me to say from this position – but the bigger issue is I would not want a lawyer who could not devote their time to my case. I would want someone, regardless of the circumstances, to be able to pay attention to me and not spend five minutes looking at my case and saying, "Oh, you just need to take the DA's deal."

Bob Selander: In all fairness I was not talking about conscription.

Rob Harris: Nor was I.

- Bob Selander: I was talking about invitation.
- Rob Harris: And compensation.
- Chair Jennifer Nash: It sounds like we can do that, I mean we can do that already.
- Sen. Floyd Prozanski: Maybe we just need to send another notice or another reminder. It sounds like it's already [Inaudible 02:20:06] possible for them to do it. Just say, "By the way if you're thinking that we [Phonetic 02:20:10] can take another case, please reach out."
- Chair Jennifer Nash: I will address the elephant in the room about that though. We have huge wait times to pay people for taking those cases, so that is certainly a deterrent to doing that, and something that has to be addressed.
- Jessica Kampfe: Although we have sensed that, in our most recent newsletter we did ask people if they had capacity to take cases hourly to do so. So, that exact request went out this week from the agency.
- Chair Jennifer Nash: And I mean, I suppose the other thing, one more thing before I have Commissioner Reinhard talk, I mean, one of the things we haven't talked about. We developed a formula for hourly rate. We don't know what that number is. And if we've hit a saturation point where at \$200 an hour for the highest level, we've got everyone we've got, then what's the next thing we look at? We have to raise the hourly rate, right, to get more people. So, that's something to discuss certainly. Commissioner Reinhard.
- Brook Reinhard: Two quick comments and then one question. I agree with everything Director Kampfe is saying, Chair Nash is saying, about the cracks in the system were exposed by 40 years of doing this the wrong way. I remember that. We can't go back to that. I used to get 30 applicants per job, I get 1 now. We don't have the workforce to be able to do that. However, the THIP program has been successful for in-custody folks, and I've been looking at the dashboard. There's very few compared to the number out of custody. It doesn't make it okay that they're out of custody unrepresented. I agree. I think we should be asking the Legislature for that THIP level funding of 175, 200 for out-of-custody folks. If the Legislature wants that to be a priority for unrepresented out of custody, they need to pay for it. That's point one.
- Second point. Trial Division should not be hiring current providers. I don't understand why this is happening. It is so offensive that I had an investigator that I lost from my office and part of the reason is the issue

was asked by the Trial Division – how much money are you making now? How much more could you make here? I don't get it. If we're trying to expand capacity, you should not be cannibalizing current providers because the very first thing you do is those people have to drop their current cases so they can work in that new jurisdiction or at least some of that. So, you're losing capacity temporarily. I am a huge supporter of the Trial Division. I think, Mr. Jeffers, you're in the right place to do this job and do it well. But I think we should consider an administrative rule that says if you have been a contractor taking PD cases within the last six months or indigent case in the last six months, you are not eligible to work for the division. I'm not talking about current people. It's fine. You need senior people who have senior people. Now, please stop cannibalizing. And then my question is what is the Trial Division's MAC utilization rate presently? Are you anywhere near where provider levels are? What is your MAC utilization rate?

Jessica Kampfe:

So, the Trial Division is doing time keeping and has been operating, at least preliminarily, under the Oregon Caseload Study powers. So, that's where we got started with. And we'll bring that in front of the commission for a decision about what the utilization should be for that division, and I think we're going to be back in front of you all in July. So, we aren't using the MAC model. We made a decision for the agency that because the MAC model is not a sustainable good model, that we're trying to move all of public defense away from, it didn't make sense to build something new under a model that we know doesn't work. So, we want to build towards what the future of Oregon should be as opposed to what our past looked like, and I'd be happy to have a follow-up and further conversation with you and the commission about that in July.

Brook Reinhard:

So, you're paying 30 to 50 percent more for the Trial Division and not having them play by the same rule. I get why you want to move it. I want a move there too. I want to be on this commission because I want us to make these investments in the future, but this doesn't make any sense. Those are my comments.

Rob Harris:

So, to clarify my comments a little based on what I'm hearing, I was not suggesting conscription. I was not suggesting ordering people to take cases they don't want to take. And I wasn't suggesting anything with an enhanced hourly rate. Those folks I think are taking the cases that they can. Maybe if you raise the hourly rate, maybe a few more will take a few more hours as well. I was suggesting contractors who in crisis counties are under their MAC, talking to them and seeing if there's any assets or provisions or accommodations the agency could make including, like I said, more paid over time if we could increase the cases

that they could ethically or they would feel they would ethically under a crisis circumstances take. That's what I was suggesting. I wasn't suggesting anything more than that.

Chair Jennifer Nash: And I'm sorry. I said conscription. Nobody else did. You're right. I was thinking conscription. It wasn't really like you had to but that is what that means, so I apologize. And thank you also for clarifying that you're specifically talking about providers that are under MAC. I thought what you were suggesting is to exceed MAC.

Rob Harris: No.

Chair Jennifer Nash: So, okay. Thank you. I was like, "No, we can't do that. No." All right. Thank you. Does anyone else have any comments? All right. With that, I'm going to move our breakup because the next... Well, one, we moved up some of our topics, but also our next topic is going to be very lengthy, so I think it's a good time to take a break. So, it's 10:30. Let's take a break until 10:40.

[No dialogue]

Chair Jennifer Nash: All right. We'll go ahead and get started. Are we recording?

[Distortion 02:38:08]

Chair Jennifer Nash: Okay. All right. If I can have commissioners who are on video turn their video on. We're going to get started. That way I'll know we have quorum. Thank you, Tom. One, two, three, four, five. We have quorum, so we need to get started. Okay. All right. So, moving on to our next item which will be a pretty lengthy discussion. First, we'll start a briefing regarding the proposals for policy option package concepts. Director Kampfe and Mr. Amador.

Jessica Kampfe: Thank you. Ralph, do you want to come on up here? Because I'm sure there will be questions that I don't know the answer to. And we also have with us here today Scott Simpson who may very well also be helpful to us and answer any more detailed questions. The reason why we've set this up on your agenda as a briefing, and then you'll hear from OCDLA and then you'll be talking about the action item, is we want to make sure that we can have full participation from our non-voting members in the conversation around the briefing portion of this. Mona, would you pull up my slides for that unrepresented? I'm sorry, not unrepresented. The policy option packages? Mona, do you have it?

[Distortion 02:40:14]

Jessica Kampfe: Okay. Sorry for the slowdown. Let me just make sure that Mona has our slides.

[Distortion 02:40:26]

Female: [Inaudible 02:40:41].

Chair Jennifer Nash: I suppose I could do it from my computer. That might actually be faster [Inaudible 02:41:02] let me.

Rob Harris: Yeah, she's here.

Chair Jennifer Nash: We hope so. I don't think I'm on the Zoom.

Female: I'm creating a bunch of feedback.

Male: I think she's [Inaudible 02:41:19] easier. [Inaudible 02:41:22].

[No dialogue]

Male: [Inaudible 02:41:54] forever but [Distortion 02:41:57].

Jessica Kampfe: Sorry about that everybody. All right. Thank you, Mona. So, this first portion is a conversation with the commission around our policy option packages for the 2025-27 budget cycle. And we've got a couple of background slides, just to orient everybody. The first bit is regarding just the timeline. So, in March through May of this year, we've been working to finalize our current service level budget and working with the commission to define what would be in our policy option packages. We're bringing to you all policy option package requests, and after our discussion today, we will be working to build what you direct us to build so that we can put it into our draft agency requested budget. We'll then be back in front of you all in July with our draft agency requested budget so that you all have an opportunity to review that, provide input for us, give us direction around prioritization and what you want to see as our top priorities within that budget. Then we'll be back in front of the commission in August for you to adopt our agency request budget, which is due to the Legislature by August 31st.

And while our process is going there, the parallel process that's happening within the Executive Branch for the development of the governor's requested budget, which is going to be developed this fall

once the agency requested budget's brought in. It's really important that we try to get our primary budget goals to the governor as soon as possible because the closer we get to her having to have her budget finalized, the less flexibility there is in there for our top priorities. So, the sooner we can make those priorities clear, the better opportunity there is to be able to get those priorities heard in the governor's budget. Next please.

I do want to be mindful of the political landscape that we're in when we're having this conversation. So, the governor has sent us a letter saying that our plan to address the unrepresented crisis should be based in the realities of the current fiscal and legislative environment, wanted to orient the commission to what that looks like, especially as we will be sending agency staff and perhaps our chair into the Legislature to go talk with folks about moving these plans [Distortion 02:44:52]. The fiscal landscape, the May revenue forecasts is up slice slightly; however, we aren't expecting a significant kicker in 2026. So, that may very well eat up all of those gains.

There has long been talk about a soft landing or a recession, and so what we're seeing in the Legislature is that there is a more fiscally conservative stance than in prior sessions. We had some specific comments that were made publicly about this by both Speaker Fahey and President Wagner, talking about paying for ongoing programs and ongoing fundings and maintaining essential services and maintaining the strategic investments that have been made over the past couple years. We know that out of our last session in the Legislature, there were significant investments made in public defense. We expect there to be a focus on maintaining those investments and asking questions similar to what Commissioner Harris asked around what are you getting from the investments that we've made in public defense so far? What did we buy? What are the outcomes that you're seeing as a result of those investments?

It is a difficult landscape for us to be asking for significant new investments. And so while we certainly do need to be making the requests for significant new investments, we just want to make sure that the commission has that orientation. And partially, I want to orient you to that because when we show up in the Legislature with a really, really big ask for new investments, people ask us, "What are the priorities here? If we can't do everything, what are the top priorities?" And so the agency really wants the commission to set those top priorities for us and not to have the agency be in the position of having to prioritize the commission's requests. So, I want to orient you all to

this political landscape so that you can really help us narrowly define what the priorities are when we are having the difficult conversations that we undoubtedly will be having throughout the next year. Next please.

When we're building policy option packages, so the baseline is our current service level budget. And you'll see as we go through this that our current service level budget, because it's based on mandated caseload, is going to be an increase over our existing budget. But once we take that current service level budget, if we're asking to make any changes, to run a new program, to increase funding for a program, all of that comes in the form of policy option packages. When the agency's building our policy option packages, we are looking at what is the statute requiring the agency to do? And what is the commission adopting as its priorities and policies and using those directives in order to build out that policy option package? Mona?

So, looking to the statutory mandates, we have a lot of them because we're going through so much systemic change right now. And so on the left-hand side, you see the statutory mandates having to do with caseloads being in line with national and regional best practices, and the commission has done work in adopting the national public defense caseload standards in order to move us in that direction. We need to be setting agency policies that are consistent with the implementation of those caseload standards.

We need to be working on data collection, that's really in our compliance, audit, and performance unit, as well as in our financial case management system, and sort of the development of the appropriate agency staff in order to be able to implement that oversight component. We also see that come in with the minimum standards for effective counsel – that's part of the compliance, audit, and performance unit as well – and ensuring that our contracts provide for compensation that's commensurate with the character of the service performed. We also have some deadlines in terms of when these types of programs have to be implemented.

So, we move branches of government on January 1st of 2025. That's a very important deadline in particular for some of our staffing needs within the agency, as well as our financial and case management system. Abolishing our flat fee contracts by January 1st of 2025 – that means we need to be moving to a workload model by the end of this biennium. And in order to do that, we're going to need the infrastructure to be able to implement that workload model.

That our private bar public defenders will be paid an hourly rate by 2027 based on the survey and economic analysis. You all have taken steps at our last commission meeting in order to adopt the formula for that survey. And then that we're building the state trial level offices to reach the percentage goals of representation by 2031 and 2035. All right, next slide.

Okay. To this end, the agency is building out nine different policy option packages. The ninth one is not in your commission meeting materials. This is since we received the letter from the governor, we are working within the agency and with the commission's Legislative Subcommittee to develop an unrepresented plan. We would expect that the results of that plan will be brought in front of the commission in July and that that would be incorporated into POP 109. So, that is a placeholder POP. All right. So, this is the overall landscape of the policy option packages that we're looking at, and let's jump into it with policy option package 101.

This is the agency's financial and case management system. It is essential infrastructure for the agency. This is a project that's been funded within the agency for four years. There has been a lot of stops and starts to this project along that time period as the agency and the commission went through significant changes in leadership during that time period. We now have the right people in place to be building this program. We have an excellent chief information officer who's gathered a good, strong team. We've got a project manager who's moving this work along, and we are close to being able to have a procurement to be able to put out there for vendors.

So, we expect to be able to procure a system this biennium, but we will have ongoing costs into the next biennium including hardware, software, data migration, hosting support, project management, and agency staffing. The projected budget right now is for 15 million. I will note that as you saw in the budget report earlier, there is a variance where we continue to have savings in this project. We may end the biennium with savings, but we have to return that money to the Legislature and then request new funding. Because it was given to the agency for four years. We're coming to the end of that four-year period. So, we may very well be returning money and then turning around and re-requesting money. That might not be 15 million of entirely new investment.

Chair Jennifer Nash:

Do we have a guess as to how much we might be returning? Just an estimate.

Jessica Kampfe: Yeah, the variance right now is about four million.

Bob Selander: It's closer to six.

Jessica Kampfe: The current variance is closer to six million. Next slide, Mona. Oh, was there a slide on discussion?

[Crosstalk 02:53:05]

Jessica Kampfe: Ah. I wanted to leave room after we talk about each POP for the commission to individually discuss those POP, even though we're not voting on them at this point in time. So, I wanted to create some slides to invite opportunity for conversation if the commission wants to discuss the financial case management system.

Chair Jennifer Nash: Are there any comments or questions about this?

Brook Reinhard: Yes. I have one, but I'll defer if others have. I don't want to talk too much.

Chair Jennifer Nash: Okay.

Brook Reinhard: Just briefly, I know that I asked this before. One thing that you talked about before was the six-year plan would include building future pay increases, etc., for providers. But I am concerned about not having a POP specifically for making sure public defenders who are not at the agency have the same level of pay. And I realize it may not be politically sustainable to do that, but I do believe that we should put that POP in front of the Legislature so the Legislature can consider it. I realize I'm a nonprofit public defender, but luckily I don't vote. So, I don't think it's a conflict for me to bring it up.

I am worried about retention when we're having these two different rates. And like I said, I want the Trial Division to be really sustainable. I just want to make sure that we're having alternatives to people who are in consortiums where we're looking at the hourly model that's going to be in place by, sorry, the formula that we talked about with the wages that's going to be in place. I don't want to leave public defenders who are in the other model of defense. So, I'm just asking if that can be considered as a POP.

Chair Jennifer Nash: Can we table that? Because it's 102. We're going to talk about it in the next one. Yeah.

Brook Reinhard: Yes, table that then. I'm sorry. I looked through and I didn't see it specifically in 102.

Chair Jennifer Nash: I think it's how it's titled. So, I think Director Kampfe'll talk about that. So, let's talk about just comments about the FCMS right now because we're just going to go one by one by one by one.

Brook Reinhard: I'm sorry.

Chair Jennifer Nash: It's okay.

Brook Reinhard: Then my only brief comment on FCMS, I'm just wondering when it looks like there'll be a contractor on board. I know there had been, yeah.

Jessica Kampfe: So, we are getting our materials complete for procurement of a vendor. And then there will be bids on that procurement. And then based on our criteria that we've developed for evaluating those bids, we will evaluate and bring a contractor on board. [Inaudible 02:55:39] do you know what the timeline is?

Chair Jennifer Nash: January.

Brook Reinhard: January, we're starting to build the system for having a contractor on board.

Jessica Kampfe: Having a contractor on what?

Brook Reinhard: Which means we're about 30 months out from having a completed FCMS system based on prior conversations about buildout. Is that correct? So, it's 18- to 24-month period once you get a contractor on board, have a completed system?

Jessica Kampfe: We have a number of projections that were included in our FCMS reporting that we filed. I wouldn't want to speak off the top of my head about the timelines because I'm not the subject matter expert on it, but the timelines are included in our last financial case management system report that was provided to the Legislature. And we have updated materials with our project managers that I can share with you if you're interested or with any...

[Crosstalk 02:56:26]

Brook Reinhard: I would be, thank you.

Chair Jennifer Nash: We have to have it by July 1st of next year because that's when OJD's support for the infrastructure goes away, right?

Jessica Kampfe: That's correct.

Chair Jennifer Nash: Okay. And we don't have any reason right now to believe that's not going to happen, right?

Brook Reinhard: It's not.

Jessica Kampfe: So, we are looking at launching the financial case management system as a staged piece of it. So, the very first and most critical stage for the agency is the financial management system component. So, that is the very first piece [Inaudible 02:56:59] in that order to be able to meet that deadline.

Chair Jennifer Nash: All right, any other comments or questions? Okay. Moving on to 102.

Jessica Kampfe: I am not. I figured I would do the agency ones first because when we get...

Chair Jennifer Nash: Oh, okay.

Jessica Kampfe: ...to POP 102, I know we're going to have a really complicated conversation. So, I thought we'd walk through some of the less complicated policy option packages first. This is with regard to agency staff. So, the Oregon Public Defense Commission's directive has grown significantly. Prior to 2021, we were really largely a pass-through entity that just provided funding for public defense. Starting in 2021, the Legislature created mandates around the agency needing to provide enough oversight. And so we are working diligently to be staffed appropriately to meet those expectations. So, this POP includes buildout to the agency's business services side or administrative side.

Chair Jennifer Nash: Questions, comments? Commissioner Harris?

Rob Harris: No, that was [Inaudible 02:58:25], sorry.

Chair Jennifer Nash: Oh, okay.

Jessica Kampfe: Okay. We can move on to POP 107. So, this is with regard to the funding that we would expect to need next biennium to support THIP work that's happening now. So, the commission has just voted to extend the

Temporary Hourly Increase Program to December 30th of 2024. We know that billing lags behind the appointment of counsel. So, if somebody's appointed on a case, that case could be open for two years, and they will continue to bill at the set rate for the entire time that the case is open. So, while new appointments will end on December 31st of 2024, the costs for this program will follow us into the next biennium. At this time, we have a placeholder budget request for \$7.7 million next biennium to pay bills that are incurred on cases that are appointed before December 31st of 2024.

Sen. Floyd Prozanski:

So, I'm not sure if this is the POP that we could talk about it, but we've heard a comment today, again, about the timely payment and lacking in getting payments to providers that are there now, 50 days now. What, if anything, can we do to make that work better than it is now? I've heard situations or suggestions, I guess, of those who have been in the process and system who know and have been verified in the past, I'm going to say, as vendors that seem to be online with their billings, being able to just pay them then come back and make any adjustments from the agency part instead of waiting to make the initial payment. And it may not be a POP, but it just seems like we need to be looking at how we can deliver the money because everything we've heard earlier, that this is probably the elephant in the room as to how we maintain, retain those individuals doing the service and encouraging others who may be coming into the profession, knowing that they're going to get timely paid.

Jessica Kampfe:

Thank you so much for the question. For clarification, ORS 151.216 requires the agency to pay within 45 days of an invoice, and our current payment time is at 49 days, so we are beyond that statutory mandate by 4 days right now. It has been worse than that in the past, and part of the way that we have been able to get those payment times closer to our statutory mandate is that we have brought on additional temporary staff. We have three additional people in accounts payable right now processing bills to get through that backlog and start bringing the monies down.

So, when we talk about the agency staff budget or a POP, there are requests in there for accounting staff to be able to do it. But the bigger problem though, and it's something that you'll see a little bit later when we look at the structure, the process mapping. And the financial case management system is sort of the long-term answer to that question. It is streamlining those processes through having a strong financial, to have all of the bills coming in through that financial case management system automatically linked to the cases, to the providers. And so that's

really going to be sort of the long-term infrastructure investment that we need to get out of the process. In the short term, we're talking about adding staff to work through the backlog. And then the commission's also going to be looking today at agency policies that impact payment times and whether or not there's work that can be done there to streamline some of those policies.

Sen. Floyd Prozanski:

Thank you.

Rob Harris:

Sorry, one question on this. This POP just includes funding through the end of this year?

Chair Jennifer Nash:

So, when we do a policy option package, if the Legislature... Oh, percent, okay, sorry. Thank you. So, if the program ends on December 31st of 2024, so not even the end of the biennium, the end of the calendar year, this is how much bills we would expect to see in the next biennium. If the commission were to extend THIP again another six months, this pot will grow. Or if the commission were to extend THIP into the next biennium, this pot will grow. So, this assumes that no more cases are taken under the THIP program beyond the extension of the program that the commission authorized this morning.

Rob Harris:

So, my question, why wouldn't this POP go to the next biennium, because your data system, your financial management system you hope to have in place by July 1, which would make the bills go easier, I guess. But why wouldn't it go until the next biennium? Because you're going to have people maybe reluctant to take hourly cases, knowing this is going to stop December 1...December 31, I'm sorry.

Jessica Kampfe:

If somebody accepts appointment on an hourly case under the THIP program, we pay them at that rate until they close the case.

Rob Harris:

Yeah. But what about January 2 when you have these cases, what's the hourly rate going to go down to? And are we going to make the unrepresented crisis worse? I'm concerned about bridging the end of this to the start of when you actually develop a path, right, is my concern.

Jessica Kampfe:

Sure. I think that's a very important concern for you to flag. We will have a gap. The commission has just extended the THIP program till December 31st, 2024. So, that's the decision that the commission made this morning, so that's what we priced it to. If the commission wanted to extend the THIP program beyond that time period, my recommendation would be that the commission take that question up

in July, that you then direct the agency to make a request with either the September E Board, with the September E Board, about whether we could receive funding to extend the program beyond December 31st. But based on the request we made with the E Board in May, the legislative authorization we got was to extend the program to December. The commission implemented that authorization today. If the commission wanted a further extension, we would need to go back through that process of working with the Legislature to secure the funding for it before we move forward with it.

Rob Harris: My question is I guess whether or not we could modify the POP to go at this point all the way to the end. What you're saying is we should go ahead and adopt this, then consider a September E Board request if we wanted it to extend beyond December 31st. Is that your recommendation?

Jessica Kampfe: That is my recommendation. And if the commission were to do that, this POP will grow in size.

Chair Jennifer Nash: I have a related question. What if the commission wanted to raise hourly rates across the board for all cases, thereby eliminating the necessity for THIP? How would that, if we wanted to do that before the new biennium, how would that impact what we asked for and what the POPs would look like?

Jessica Kampfe: First of all, the statute says that the commission cannot direct the agency to deficit spend.

Chair Jennifer Nash: Right.

Jessica Kampfe: So, it can't tell us to spend money that we don't have. And currently, we don't have money for you to raise the hourly rates beyond what they are within either our court mandated or our preauthorized expense budget [Inaudible 03:07:06]. So, if the commission wanted to direct the agency to raise the overall hourly rate, what the commission would need to do would be to direct the agency to make a request to the September E Board to increase the hourly rates. The agency would then go to the E Board in September and ask for that increase. The E Board would decide whether or not to fund it. And then we would come back in front of the commission, and the commission could potentially implement that as early as October, if it was funded by the September E Board.

The challenge with the September E Board or with any Emergency Board is that there's only a certain amount of money that the Legislature sets aside for each Emergency Board, and that amount of money is statewide. In September, in particular, the State Legislature is tasked with funding wildfire defense. That's a significant expense that comes in front of the September E Board and eats a lot of that pot of money. So, it may very well not be possible to get that money in September. I think it's unlikely we would get that money in September, but we could make the ask. If the commission were to do that, I don't think it would actually impact your policy option packages because you have a policy option package that we are going to get to today in POP, let me see which one it is, 104, that increases the hourly rates. So, if the commission were to ask the E Board to increase your hourly rates consistent with what POP 104 is, then your policy option package would remain the same.

Chair Jennifer Nash: So, isn't then the cleanest thing to do to extend THIP to July 1st, 2025, and then implement hourly rates, new hourly rates, July 1st, 2025?

Jessica Kampfe: To extend THIP to July 1st?

Chair Jennifer Nash: Yeah, there's no gap.

Jessica Kampfe: That could very well be an advisable thing to do, and it's something that this commission could consider in July. If you wanted to consider directing the agency to make a request to the Legislature, we would then send them a letter asking them to extend the THIP funding. They would hear that at the September Emergency Board, and then they would tell us whether or not they're going to fund it.

Chair Jennifer Nash: The next E Board's in December?

Jessica Kampfe: September.

Chair Jennifer Nash: No, I mean, after that, sorry.

Jessica Kampfe: Is December an E Board or is it something else?

Male: Yes.

Jessica Kampfe: It's an E Board. Okay, so there's one in December too.

Chair Jennifer Nash: So, we would do that in December because we've already authorized it and had approval to authorize it through December 31st, right? So, if we

wanted to extend it from January 1 to July 1, we would do that at the December E Board.

Sen. Floyd Prozanski: [Inaudible 03:10:13] September. Yeah, December, even year/odd year makes a difference as to when we do the last ledge days, and I do believe [Inaudible 03:10:24], but December, of course, is just basically a month, six weeks before we start session.

Chair Jennifer Nash: I mean, I think – I realize we're kind of jumping ahead – but it's all interrelated, right? So, we've got the governor's letter and our highest priority to solve this and address this unrepresented persons crisis. And the commission's been consistent in saying we can't let THIP expire. And so that I think we need to assume, for the numbers, for whatever we need to ask for, that we're going to extend THIP through July 1st...or June 30th, 2025, which would then affect this POP because there would be more billing through the next biennium.

Jessica Kampfe: That's correct. This POP would increase if there is an extension of the THIP program beyond December 30th.

Chair Jennifer Nash: I'm interested in hearing what other commissioners think about that. Anybody? I see Brook there.

Brook Reinhard: I know I've said in the past I think that it's a short-term fix. I still think it's a short-term fix because if we look at this roadmap and look at what the governor's asking for, I think extending it to July 1st makes sense. I realize that's not on the table for today, but I think it's better to have predictability so contractors know what they can or can't do and gets us to the gap of July 1st.

Vice-Chair Susan Mandiberg: I also think it's a good idea to ask for what we need, even if the Legislature, E Board turns us down. At least we've been honest with them about what it means to solve this problem because they need to know what it's going to cost. We can't pretend it's not going to cost [Laughter] [Inaudible 03:12:20].

Chair Jennifer Nash: Yeah, I mean, that number's, the unrepresented number's going to, the in-custody's going to grow or be released.

Vice-Chair Susan Mandiberg: So, even if we don't get it, I don't think it hurts to say, "Look, this is what it means, and if you don't want to fund it, ball's in your court."

Jessica Kampfe: And to that point, I think there's a difference between asking for funding for an extension of a specific program with a timeline that

expires and asking for funding for a new rate at an E Board, and the difference is that E Board funding is one-time in nature. So, that's why our THIP program has been limited in duration in chunks. But if you're asking to just increase the rate going forward, that's something that an E Board is going to be less...they'll unlikely want to make a one-time investment in a new rate, so a one-time investment in a program is a much cleaner ask.

Rob Harris:

Aren't we at that point where the money's kind of there, you're just going back to ask for it to be allocated or to be released...

[Crosstalk 03:13:21]

Jessica Kampfe:

We do have money that exists in special appropriation, SPA, special purpose appropriations for the agency. There was, I believe, 6.2 million for public defense. We had originally planned to go to the E Board in May and ask for 5 million of that for the current extension of THIP. But because our billing is so much further behind, like our actuals are hard to tell right now because the billing lags, the Legislature wanted us to come back with more data and more information in September. So, they asked to set aside 5 million of that 6.2 for the extension that the commission authorized today. That leaves 1.2 million left in that SPA or maybe more if our \$5 million ask is wrong, or maybe less if our \$5 million ask is wrong. So, we could guesstimate that it would be 1.2 left, which is significantly less than what you would need for a whole 'nother six months. So, there would need to be a request for general fund as well as the special purpose appropriation.

Sen. Floyd Prozanski:

Madam Chair, I don't [Inaudible 03:14:46], but I don't know if that new request for money in an E Board can actually be done through the E Board as much as going through the revenue process, but on the policy law, not [Inaudible 03:15:01].

Chair Jennifer Nash:

Did we lose Representative Evans?

Sen. Floyd Prozanski:

Evans and...

[Crosstalk 03:15:06]

Chair Jennifer Nash:

...at one point.

Jessica Kampfe:

I think Buckley was only going to be able to join us for an hour this morning.

Chair Jennifer Nash: He's by phone, I think.

Jessica Kampfe: Oh, he is by phone.

Chair Jennifer Nash: Representative, or I mean former Representative, Commissioner Buckley, are you on the phone? Okay. Well, I mean...

Peter Buckley: I am on.

Chair Jennifer Nash: Perfect.

Peter Buckley: Hello. I am on the phone.

Chair Jennifer Nash: Great. We had a question about Ways and Means and Appropriations at the E Board that maybe you can help with. So, if the commission at a future meeting extended the THIP program through July 1st, 2025, would the E Board be able to authorize an appropriation for that from general fund?

Peter Buckley: If they have it left in their budget, yes.

Chair Jennifer Nash: Okay. That's the right question?

[Crosstalk 03:16:15]

Peter Buckley: Fire season comes into play too. Fire season tends to take a lot of the E Board's budget in December. But if they have a balance, they can use that balance any way they wish to.

Chair Jennifer Nash: Okay, perfect. Thank you very much for that information.

Jessica Kampfe: So, I think what the agency may work to do is on this POP 107, which will be an action item later, but what I'm picking up from this conversation is perhaps the commission would like us to price this POP assuming an extension of the program through the end of the biennium.

Chair Jennifer Nash: Yes.

Jessica Kampfe: Okay.

Brook Reinhard: I have one follow-up question, Director Kampfe. Would it be possible for our July meeting for the commission to have also priced based on your estimates to where it's at now with unrepresented people out of custody, how much it would cost to extend THIP to July 2025 for out-of-

custody unrepresented as well? I know the price tag would be big, but I think the Legislature should know the answer.

Jessica Kampfe:

I don't know the answer to that question. It's very difficult for us to do cost per case, and there's a period of time when the THIP program was extended to out-of-custody cases, but it wasn't that long of a period of time, so our sample size is pretty small. I'm not sure if we have the data to extrapolate that. I mean, we could certainly say how many cases there are and how many more cases would be covered, but we wouldn't know if we could actually get all of those cases covered. And there'd be a lot of unknowns.

Brook Reinhard:

But it could be a range of saying this is how much each case costs per case type, this is how many are unrepresented out of custody now. It could be this to this range.

Jessica Kampfe:

I don't know if we have the data to be able to do that.

Chair Jennifer Nash:

We have the national study numbers. Why couldn't we use that? We know how many hours from the national study; we've adopted the national study. As long as we explain the methodology, maybe why couldn't we use the hours per case from the national study and apply it to the matrix that we have of unrepresented people?

Jessica Kampfe:

We could probably build a model of that nature to do it. We just wouldn't be using actuals in order to build it. It would be a projection as opposed to based on prior.

Chair Jennifer Nash:

I think it's all projections that we do. I mean, I think that really should go as part of the governor's plan, "We could do this, and this is how much it would cost to do that." But I mean, I think that's something that when we talk about that later, we can discuss more fully, but it's a good thought. Okay, any other questions, concerns, anything about the THIP, the Temporary Hourly Increase Program policy option package? All right.

Jessica Kampfe:

Thank you. Next slide, Mona, 108. This is something that we are actually really interested in getting commission direction about how you would like us to build it. And I know that you are going to hear between the end of our conversation with you about thoughts and real action items. You'll also hear from OCDLA in the specific recruitment and retention. In 2024, the Legislature authorized one-time funding in House Bill 5204 for law schools to develop public defense clinics. That funding is running through OPDC. The commission could ask OPDC for a policy option

package to continue that program into the next biennium, so to seek funding for the next biennium.

In prior years, we were able to secure Byrne JAG grant funding to provide law students stipends, or law students that work in public defender offices. We did not have those funds available to us this summer, but we did last summer. My understanding is it's a very popular program and people appreciated it. There is the ongoing investments in training programs for new lawyers. To be clear, training and supervision that's built into our current contract model is a continuation of our current service level. But if the commission wanted us to expand training programs within public defender offices, that's something we could build out in a policy option package, as well as expanding the utilization of the Supervised Practice Portfolio Examination program. So, we're really interested in hearing from the commission about what you would like us to pursue in terms of recruitment and retention requests.

Sen. Floyd Prozanski:

Speaking from my perspective and giving, I guess, the caveat, I took this one on in the Legislature and I'm going to continue to take it on. I think this is a great opportunity for the state to invest in a pipeline of getting new attorneys into public defender services. So, those three law schools, met with one of them yesterday, and I've told them, and I'm telling the commission now that I will be pushing hard to retain that funding and hopefully increase it as we start getting the numbers coming back. My understanding between the three law schools, they anticipate bringing in 60 new individuals in each time period.

And so this is an opportunity, we've heard from just the public testimony today for those who are going through the alternative to the bar, getting that experience hands-on and being able to move forward. And you have the same thing with this pipeline of new students coming out of law school. And I see how those can actually be mixed to the point where they may not even want and need to take the bar exam because they'll have all that training and experience firsthand. So, I would strongly urge that we continue to do that. I'll see how else we keep from slipping back and having crisis after crisis, not having enough people.

Vice-Chair Susan Mandiberg:

Are the stipends for people who are still in law school so that they can work in public defense offices as certified law students? Or are they stipends for students who have graduated and need help repaying their student loans? Which way does that work?

Jessica Kampfe: Shannon Flowers, did you hear that question?

Shannon Flowers: I did not hear it, sorry.

Jessica Kampfe: The question was the stipends that were paid last summer for CLSs, do you know if those were rising 3Ls or if they were rising lawyers?

Vice-Chair Susan Mandiberg: In other words, are they paying to people while they're still in law school or are they loan repayments stipends for people after they've graduated?

Shannon Flowers: I believe there were both, and Christine Breton might be able to speak to this more specifically, but I believe they were law students currently in law school and also people in the summer after their 3L year, that they have been admitted to the bar and waiting to get their license.

Jessica Kampfe: And do you know what the stipend was last year, was it \$5,000?

Shannon Flowers: Oh, I'm going to have to defer to Christine.

Christine Breton: Hi. So, Christine Breton, resource counsel, so the Byrne JAG fund, it was a range. We actually gave a range of stipends based on the law student's position. And so, I believe the highest amount was for CLSs [Inaudible 03:24:07] after their second year of law school who was practically [Phonetic 03:24:10] a certified law student, but there were also stipends provided for individuals who were post-graduation waiting for bar results and still working under their CLS. But we also provided lower stipends for law firms that were often working who did not have the certified law student accreditation. And also, even a couple offices that had high school or college students, so there was some amount of money there.

The way the Byrne JAG money came to us, it came too late in the cycle for it to be used as a recruitment tool, unfortunately, to say, "Hey, come apply to be a law student [Inaudible 03:24:46]." So, what we did is we surveyed all of our providers to tell us what law students or what students have. And once we got that information, we figured out how to distribute the funds proportionally and kind of figure out stipend amounts from there. I have in my computer what the actual amounts were. Do you remember what the highest amounts were?

Brook Reinhard: It was between, the lowest was 2,500 and the highest was, I think, 7,500, or [Inaudible 03:25:16] for the people who were actually certified law students who'd passed the bar awaiting admission.

- Christine Breton: Right. Well, the terms of the funding means that there's actually still a little bit that is being invoiced against to the end of this month actually, so it's still actually in use. The vast majority of it has been invoiced out, and it ended up going to over 80 different students in a variety of jurisdictions across the entire state, not just nonprofits, but a whole lot of consortiums, law firms, solo practitioners, and law students. It really ran the gamut of all the professions.
- Vice-Chair Susan Mandiberg: So, I have another question. I know, I mean, all that's great, and it keeps students while they're in law school from working for the private bar in order to make enough money to support themselves, for sure. But another thing that I know keeps graduates out of both public defense and legal aid is they have the increased loans to repay, and the salaries that they currently get frequently don't give them enough money to service their law school loans and keep body and soul together and have a family and so forth.
- And I wondered if your panel discussions gave any thought to eventually, if not right at the moment, having some kind of loan repayment support for people after they have passed the bar. I know that the bar has some loan repayment assistance support. I think all three law schools do, I know Lewis & Clark does, but they're limited programs. And so, at some point, that would be something that I think would not only recruit people into public defense work but would keep them there. It takes a long time to pay off your law school loans these days. People are graduating with \$175,000 in law school loans.
- Christine Breton: I'm one of those indentured.
- Vice-Chair Susan Mandiberg: Exactly. And so, I know that some of the people who are leaving nonprofit public defense are leaving because they have gotten to the point in their lives where they want to get married or be with a partner permanently and they want to buy a house and they want to have a family. And they need to pay off their law school loans, and they can't do it, even if it's four or five years out of law school. So, that might be something to explore with your workgroup in the future.
- Brook Reinhard: We have talked about that in the workgroups that I've been at as well. I would say, if you do public defense for 10 years, your loans are forgiven. I'm one of those people, I had my loans forgiven. I've been doing this for 10 years now. It was great to have that done. It was an amazing feeling.
- Chair Jennifer Nash: Only as a nonprofit though.

Brook Reinhard: Right. And there was a legislative proposal last year to expand that, and I think that's a good idea. I think people who do PD work should be able to do it, period.

Vice-Chair Susan Mandiberg: I agree.

Brook Reinhard: It's a great recruiting tool for the nonprofits to be able to do that, but I do think that anybody who does indigent defense should be able to do it. So, if there's a way to expand it, that's really important.

Vice-Chair Susan Mandiberg: I guess my point is that I know that people are leaving before those 10 years because they can't make it to the 10-year mark.

Jessica Kampfe: I know Senator Prozanski has...

Sen. Floyd Prozanski: I just want to call out [Inaudible 03:28:37] props in the audience, this is one of the models that he brought forward. I assume that he's going to continue to work on this as best we can. This is another means of retention, and those that are there, keeping them from leaving.

Chair Jennifer Nash: And I'd just like to invite Eric Deitrick, our general counsel, to share about the work that we're doing around the loan repayment for private bar public defenders.

Eric Deitrick: Yeah, thanks. For the record, Eric Deitrick. So, during our break, I was talking with a public defender from Deschutes County I've been in communication with about this over three years now. And we finally signed off on her application for student loan forgiveness. This is a good thing retroactively. So, what happened, the federal program, as Mr. Reinhard talked about, was for 10 years, if you were employed by the state or a nonprofit public defender office. The federal government recently changed the administrative rules that if you're a state that by policy choice did not hire public defenders, in other words, the folks in law firms and consortia, you're now eligible for student loan forgiveness if you can attest that you are doing full-time public defense work and defined full-time as 30 hours per week.

So, I've been in communication with several public defenders over the last few months. There was some concern over how at the agency level could we sign off on someone certifying it at 30 hours per week. We got clearance from DOJ. We're going to write a policy. We're going to get forms out. I think this is really good news for a lot of the folks in this

state because the structure we had really limited people from being eligible for the student loan forgiveness.

Vice-Chair Susan Mandiberg: That's great.

Chair Jennifer Nash: And I believe Commissioner Reinhard [Inaudible 03:30:35], yeah.

Brook Reinhard: Well, and so I've been practicing for 18 years now, and I still have over \$100,000 of student loans, and I've been doing public defense [Inaudible 03:30:48]. The sad part is I don't think my experience is super unusual amongst our providers. Obviously, I make a fair wage. But obviously, the weight of that student debt does have some financial impact on my ability to do what I need to do. And I'm sure it has, and I don't have kids, but that's not the situation that a lot of our providers deal with. And I think if we could, as a commission and as a legal community, if we could find a way to extend this to providers like myself who have spent our entire career devoting it to public defense, if we could find a way to do that, I think it would have a significant impact on their lives and their ability to continue to do this work.

Chair Jennifer Nash: Thank you. Other comments or questions about recruitment and retention and really providing some direction to the agency?

Brook Reinhard: Just one quick comment. I think what's been done the last few years, recruitment and retention for the nonprofits has been very helpful. I have not lost a single attorney in an entire year. That's never happened before, and it's because I have really good supervisors who are paid to have a reduced caseload of supervisors. And they still take a ton of cases. And I have to tell them, "No, you can't take a new murder case because you're over capacity." So, these things do work, and I think continuing it is really important, and I'm really excited to hear more about OCDLA's proposal that would dovetail with those efforts as well.

Chair Jennifer Nash: And I guess I have a question about that. OCDLA's proposal would then get put into POP 108, or how does that work together?

Jessica Kampfe: So, right now, we haven't priced out POP 108 for you all. We really wanted to hear from you about what kind of recruitment pipelines you wanted the agency to be focusing on. So, prior to voting on an action item here, we're going to hear a presentation from OCDLA, and you could certainly incorporate information that you hear from them in the direction that you give the agency when we move to the voting piece of this.

Rob Harris: So, that was going to be my question. We're not taking any action, this is informational at this point, and maybe you're going to build out a POP and present it to us maybe June, July, is that the idea?

[Crosstalk 03:33:31]

Jessica Kampfe: Right now, the agenda item that we're on is the briefing on the POPs. After this briefing, you'll hear a briefing from OCDLA and then the very next item on the agenda is action items for approval of the policy option package concepts. What we will do with that direction from the commission is Ralph and his shop are going to work diligently to build out the agency's requested budget. We'll be back in front of you all in July with our agency requested budget. You're going to see the breakdowns in there in terms of the things that you directed us to go ask for. And then that'll be a review. You can ask a lot of questions. You can help give us some prioritization in July. And then we'll be back in August for you to vote on the agency's requested budget, and that has to be turned into the Legislature by August 31st.

Rob Harris: Got it. So, the only additional comment I would make [Inaudible 03:34:32] the OCDLA presentation, I guess soon we're going to revisit 108 later, is that there's a lot of folks who are doing recruitment outside the state, doing outreach, and it seems like there's real opportunities to attract lawyers, experienced criminal lawyers into the state given locally low caseloads and higher pay than many other jurisdictions will have. And I don't know if the agency would consider a budget number, line-item budget for out-of-state recruitment specifically, which can help every single agency in this state and relieve them of the burden of using some of their money for out-of-state recruitment. There is still going to be some, I mean, but is there a way to sort of come up with a line item, put out a video? I don't know what you do, put out advertisements or a great video or something of Brooks people who love it here. Rather than having that out-of-state recruitment be spent by every single or several agencies in the state.

Chair Jennifer Nash: Yeah, I was going to mention that too. I mean, I think that kind of goes under the outreach, job fairs, new lawyer programs, etc., the sort of broad category. But I mean, you're right. I went to the open house that the Trial Division had, which was really interesting, but the most interesting part about that for me was listening to two of the lawyers who came from Florida and New York who talked about how those states have reciprocity with Oregon. The lawyer from Manhattan said that the public defender jobs in Manhattan are coveted positions, and that for every position that's open, they have like 75 or 100 applicants, I

can't remember, some really high number, and that the pay is so low for the cost of living there that coming here was wonderful. Because she could step right in, the pay for the cost of living was comparable. Same thing in Florida. And both of them said, "If you just recruited in those two states, you'd have tons of people who would come into jobs here." And then there's states like California where we don't have reciprocity, where you can get experienced criminal defense lawyers who want to practice here and could do that under the Supervised Practice Portfolio. So, I think being able to do some of that outreach out of state is really important and can really be a boon for us. So, make sure that's a line item on there somewhere too.

Jessica Kampfe: Got a note, out of state recruitment.

Chair Jennifer Nash: All right, okay, thank you.

Jessica Kampfe: All right, Mona, can you move us on to slide 15? Thank you. Okay, this is the big beast of interconnected POPs. So, this is implementation of the workload model, and this is spread out across four different POPs. So, we have POP 102, which looks at the criminal contracts and that would be, to be clear, in a biennium, we're looking at what we can do in the next two years. So, in the next two years, the agency's intention is that we would continue extending our contracting model to everybody that is currently contemplated. So, that's nonprofit public defender offices, law firms, consortias. So, POP 101 is all of those criminal law contracts. POP 103 is the build out of the OPDC Trial Division. POP 104 is the hourly providers – and this, I'm using the word providers because we're talking about more than just lawyers, it's all different public defense providers. And then POP 105 is the workload for the juvenile contracts.

So, as a whole, these POPs increase attorney compensation, they start implementing workload standards, they start implementing the economic study and hourly rate, they build support staffing, and they increase the number of providers throughout the state trial level offices. All right, Mona, number 16. Taking the easiest one first, [Laughter] which is the state trial offices. So, this is what we are projecting in terms of the growth that would be needed within the Trial Division to reach the goals set by Senate Bill 337. And it would add 40 attorneys and corresponding core support staff to the Oregon Public Defense Commission's Trial Division over the next two years. The positions would come on staggered throughout the biennium and the projected cost is 22.6 million. This is lawyers and staff. And we have used the staffing models that you see in the same ratios of staffing that you see

built throughout the contract model. Do folks have discussion around the OPDC Trial Division?

Chair Jennifer Nash: I have a question. I know you and I have talked about the state Trial Division's expanded quickly and there isn't really the core infrastructure to build a robust office like this over a short period of time because there are basic things like office managers, lower-level people, program builders, things like that. And I'm wondering if this 22.6 million includes those kinds of staff as well.

Jessica Kampfe: The 22.6 million does include office managers. It does not include, I believe, we call them OPAs, who are the types of folks that write policies and procedures, but that is in the agency's request for agency staff. So, the POP of that, 106 is the agency staff.

Chair Jennifer Nash: Should it be in this? I mean, if they're going to be...

Jessica Kampfe: There's a lot of those kinds of judgment calls throughout this, like do you put the staffing request in the executive, or do you put it in that program? And I think that you could justify doing either way.

Vice-Chair Susan Mandiberg: If the policies are supposed to be consistent across the state trial offices, it makes sense to me to put it in the executive.

Jessica Kampfe: Which is what we did.

Vice-Chair Susan Mandiberg: Yeah. Because otherwise, you'd then have to deal with different trial offices having different policies, right? Yeah. Maybe different policies are a good idea because of county differences, but then it seems to me that could be accommodated, right?

Jessica Kampfe: Right. Because of the timing of how this all got launched, it was very, very quick build out of these trial offices, we have hired our chief, I think, like two weeks ago [Inaudible 03:42:02] hiring our first staff. So, there wasn't a lot of time for us to really build out all of the policies and procedures and desk manuals and all of that type of stuff. We are doing that as we're going right now, but we do need resources to build that infrastructure so that these offices can be successful long term. We took that into account when saying that we could potentially expand the trial level offices by 40 attorneys in the next two years. We had looked at whether or not we wanted to put 80 attorneys in this policy option package in order to meet the growth projections, but that felt like a very large amount of recruitment and growth while we're still working on

getting those foundational pieces in place. So, this was a more conservative approach to the build out of the Trial Division.

Chair Jennifer Nash: And have you worked with Mr. Jeffers about what he thinks the structure should look like to be able to move forward?

Jessica Kampfe: We have, yes.

Rob Harris: Can I ask a basic question here? It looks like all these POPs, 102, 3, 4, 5, maybe not the juvenile [Phonetic 03:43:13]. In looking at the introduction to these, it looks like you're estimating 480 additional lawyers and that's based on the Moss Adams report. But let me ask – is that 480 based on 1,578 hours and the ABA standards, which is when this commission adopted, I believe, last time, or is it based on their original protection? If it is based – Eric, I see you saying yes – if it were based on the 1,578 plus the ABA standards, what would the number of additional attorneys mean? Because everything flows from that calculation, which is not the one we adopted.

Jessica Kampfe: Right, so I'm going to have Eric answer this question in detail, but I'm going to start off by laying sort of a framework, which is the Moss Adams report provided information for the commission and a recommendation for the commission. The commission went a different direction than what was built into the Moss Adams report. And so we are now working with Moss Adams to modify the six-year plan in conjunction with the direction that we received from the commission. We've just finalized our agreement with them and set timelines for when we can have those modifications in place. I know Scott Simpson is here. Hi, Scott. Do you know about the timeline for when we expect to have the new six-year plan?

Scott Simpson: We're kicking that off now in June. It's a matter of how fast we can get the data and crunch the data. I'm thinking that we'll have some preliminary ideas I'm going to think sometime in the latter half of July, and kind of know what the numbers are going to start to look like, the final report that we issue in August.

Jessica Kampfe: Thank you. So, to your point, Rob, with the timeline we discussed earlier for the budget bill process, we can't wait on the Moss Adams final report to develop the agency's requested budget. So, that's sort of the overall framework. We won't have the final answer from Moss Adams until it's too late to build it into the agency's request budget. And with that, I'll turn it over to Eric to answer the more specific question you have about what we used for the modeling here.

- Eric Deitrick: Thanks, Director Kampfe, Commissioner Harris. I want to be clear, the 80 was not put in here because we made a decision to stick to that. We needed to have some data-informed number of attorneys that we could justify in the policy option package. And given the direction we received about 1,578 hours per year in the national workload study, we need to work with Moss Adams to get those numbers put together. It's certainly our intention that that'll be the basis of the ask, and we'll use that information going forward. Hopefully, we get it in time to include in the ARB. But even if we don't have that information to provide the legislators, it's a little bit challenging with the Oregon report because it was done here, all the case types aligned with our statutes, and we have to go through a mapping process and figure out based on the national standards of major felony, mid felony, where to put those in.
- Rob Harris: So, is it fair to say then that the presentation to us, these numbers, although...these colors, I guess, there's not numbers, colors, that we have here and the total number of attorneys you asked for could...would change after the revised Moss Adams report is [Inaudible 03:46:57]. So, instead of... Say it's 480, all right? Say instead of 480, it's 360. Then like the 80 number would go down to 60. You'd just be doing a pro rata adjustment. Is that the idea?
- Eric Deitrick: Yeah, and so thinking about... The original numbers were based on 2,080. Well, 1578's about 25% less than that. But at the same time, the caseload standards at the national level aren't as restrictive as they were in the Oregon report. So, I think it'll land somewhere close to 80, but the plan would be to adjust based on the new formula.
- Rob Harris: So, you're using it because you think it's going to be pretty close, but it will be final... Well, the Legislature has the final say in it [Inaudible 03:47:41]. So, I guess you will be presenting [Inaudible 03:47:44]. I just wanted to make sure we were going to go on the adjusted...
- Eric Deitrick: We are.
- Rob Harris: ...numbers that were adopted. Okay, that's what I wanted to hear, thank you.
- Jessica Kampfe: It's primarily a timing issue that we're using estimates now...
- Rob Harris: I got it, I got it.
- Jessica Kampfe: ...but we're doing the best we can with the information we have.

- Rob Harris: All right, that's my starting question. Sorry to interrupt.
- Jessica Kampfe: Yeah, no, thank you. These are great questions and important discussion to have.
- Chair Jennifer Nash: Any questions or comment, further discussion on POP 103, the Trial Division?
- Rob Harris: Well, I did have one. So, it's going to add how many lawyer...40 lawyers for now. But that will be all the way through the end of the... I'm assuming that's 40th by the end of the biennium or maybe 12 months or what's your projection on that?
- Jessica Kampfe: It is, yes, it is a staggered implementation. Ralph, have you figured out exactly what the increments are [Inaudible 03:48:34] that?
- Ralph Amador: We did, but it changes because as you increase the amount of lawyers, the percentage goes up. Because it was 20% and 30% and we keep adding more attorneys. So, as we add more attorneys, that percentage goes up.
- Rob Harris: So, as I look at the number 22.6, it's not 22.6 divided by 40. That wouldn't get the other number. It'd be some different number than that.
- Jessica Kampfe: Oh, yeah. Because it's not just lawyers, right? We would need to add... Part of that number is the support staff calculation.
- Rob Harris: Sure. I mean, there's per lawyer seat, I'm just trying to compare it to another qualifier. It was also going to be...
- [Crosstalk 03:49:17]
- Jessica Kampfe: Oh, and it would be staggered. So, it wouldn't be for two years' worth of those lawyers. Some of them would come on in July. Some of them would come on in January. Some would come on the next July. So, it is a staggered implementation.
- Rob Harris: And then I'm assuming there's also some line items in there about rental deposits, buying a bunch of stuff, buying desks, all that stuff.
- Ralph Amador: Yes, sir.

Rob Harris: Okay, that's what I need. Thank you.

Jessica Kampfe: Okay. The next policy... Is there a slide before this one, Mona?

Mona Riesterer: There isn't [Inaudible 03:49:49].

Jessica Kampfe: Oh, okay, all right, great. The next policy option package that we are looking at, I had lost my place here.

Male: [Inaudible 03:50:00].

Male: It says 103.

Chair Jennifer Nash: The hourly rate. This is an hourly rate.

Jessica Kampfe: Yeah, this is the hourly rate one. So, the first slide is kind of reviewing the work that the commission has already done. So, the commission directed the agency with regard to what you want us to adopt for the number of billable hours, as well as the annual caseload standard. And this is under the national defense caseload standard that is modified for 1,578 billable hours. The commission also directed the agency to use the formula below in order to calculate an hourly rate. The statute requires that the hourly rate from this formula must be implemented by 2027, but there is no statutory prohibition for an earlier implementation. It's just required that it has to be done by 2027. Next slide.

The commission by statute must establish a panel of public defense attorneys by July of 2025. We would expect that we would use the new hourly rates for that panel, and that by July of 2027, we cannot compensate less than the new hourly rate that's based on the economic survey. This POP is built with the assumption that in July of 2025, we would be funding 40 new panel attorneys under this rate, and that it would increase the hourly rate we're funding for all of the panel attorneys, and it would also increase the hourly rate funding for investigators and mitigators through our preauthorized expense process. So, these are the assumptions that are built into POP 104.

Vice-Chair Susan Mandiberg: Do you mean 40 FTE?

Chair Jennifer Nash: It was 40 new lawyers.

- Jessica Kampfe: It means 40 FTE. I mean, they're not full-time employees because they're not employees, so it's kind of an awkward term, but it's like 40 full-time lawyers.
- Chair Jennifer Nash: Meaning that you think that with the new hourly rate, you'll attract 40 FTE additional lawyers to do hourly work? Or are you thinking that some contract lawyers will then switch to hourly?
- Jessica Kampfe: That's a really great question, and that gets to how interconnected this stuff is, especially as we're transitioning to a new model. So, we know that we need to grow the total number of lawyers in Oregon in order to meet the need and to implement a workload standard, right? So, in order to meet the one-third implementation of the workload standard, we have to grow the total number of lawyers by 160. The agency in our policy option packages split out that growth among POPs, so we have 40 of the 160 in the state offices, 40 in the panel, and 80 in the contracts. So, this is all new capacity.
- I think that there is another question that you are maybe asking which is, can we get 160 more lawyers in Oregon in the next biennium? And I hope so. And the number is higher than that. I want to just pause for a moment and talk about current service level budget. So, our current service level budget is based on what we currently pay people plus inflationary increase by mandated caseload. And we worked with the DAS for the first time in order to do a caseload forecast for Oregon. We worked with DAS and the Oregon Judicial Department and had representatives from the Legislative Fiscal Office and the governor's office that participated in the creation of our new caseload forecast.
- The agency then had to take that caseload forecast and forecast how many lawyers we would need in order to meet that mandated caseload. We are forecasting a need for an additional 65, 66 lawyers in order to meet our mandated caseload need. So, our current service level budget includes increasing the numbers of lawyers doing public defense in Oregon by 66 lawyers. That doesn't start us along the path of implementing a workload plan. That's treading the water. That's how many we need to meet the new cases that we expect to come into the system based on the DAS forecast. Under our MAC model, there's nothing else that's changed.
- Chair Jennifer Nash: Not the unrepresented list.
- Jessica Kampfe: Not the unrepresented list, just 66 more lawyers we're going to need to maintain the status quo and not lose any ground under our current

service level budget. So, when we're talking about these numbers about adding lawyers, about adding 160, we're actually, we've got the 65 or 66 that we need, plus the 160. So, we're really in, like, what is that? 240? 220? 220.

Vice-Chair Susan Mandiberg: And that's in the next biennium.

Jessica Kampfe: That would be in the next biennium. To meet the current service level would be that 65-ish. And then to start down the workload implementation path would be 180 in addition to the current service level.

Chair Jennifer Nash: How many are coming out of law school? Clinics?

[Laughter]

Ralph Amador: [Inaudible 03:56:06].

Jessica Kampfe: Each or total?

Rob Harris: I think total is what I saw.

Chair Jennifer Nash: Okay.

Male: [Inaudible 03:56:15].

Jessica Kampfe: I mean, I think there are some legitimate questions about whether we have the infrastructure to support that rapid growth. We certainly need that many new lawyers, but it's a big lift to bring all those lawyers in. So, the agency made some choices about where to put that funding request. And we made choices about putting 80 of the positions in contracts and understood that some of the limitations around putting those positions in contracts is that these are like brick-and-mortar shops. They only have so many seats to put...

[End of part 1]