

Commissioner Robert Harris:

...make a difference. I think that looking at the national levels and then comparing them to what Oregon has, you see a couple of outliers. I think in the low-level, the misdemeanors, and the higher-level cases, you see some differences. If you look at the list of, what was it, 17 reported states, I think, or studies that they did, something in that area, Oregon had the most hours, I think, in 15 of those states, categories, or something like that. And there was a couple where it was maybe number two or three, but it was still way on the high end. And in a couple of those categories, it was, like in the misdemeanor, I think it was definitely an outlier, substantially over the national average.

A couple of things. Number one, I want to go back a little bit, state of Washington, they adopted the national standards, but "they" is the Washington State Bar Association. It's not the Supreme Court. It's not the contractors. And the question is whether or not the courts are going to go along with that. Now, of course, those lawyers are in a little bit of a pickle. If the state bar says it's unethical to go higher than this number, they probably just can't contract at that point. And I think they're going to come to a little bit of a head, but they also agreed to phase those numbers in. I guess you can be a little bit unethical till we get the funding right and enough lawyers. But they didn't adopt them, from my understanding, like starting next contract period. And Washington actually still has some flat fee contractors, I believe, as well.

So, I guess my opinion looking at these was I said, "Well, maybe today we adopt, or we direct the decisions to be made based upon the national average, but maybe start collecting the data that we need to collect." Because when we have the case management system up and running, we will be able to start collecting data from all the lawyers who are doing this work and comparing them maybe to outcomes as well if we get those, the metrics for outcomes decided upon, which I don't think have been yet. But if we said, "Well, look, right now maybe our goal is to get the Oregon standards, but for this contracting period, we're going to aim for national standards." So, I look at almost every one of these studies as pretty subjective because they're based upon not necessarily data or timekeeping that the lawyers have done. I'm not going to say they're aspirational because they may very well be mandatory in some of these numbers to provide adequate defense.

One thing I've told somebody, I said, "As I get older, it's not that you just keep learning stuff. You also have to unlearn things." And I've had to unlearn things. The way we did things 20 years ago or 15 years ago are probably not the best way to go about doing things. And so I'm glad we have this data coming in, some of it's anecdotal, but I would suggest that none of these are just unalterable. I mean, I think this is informational, and to be realistic about this, I'd love to have the national standards. I think if we actually implemented the national standards, we might be one of the lowest caseload [Laughter] per public defender in the entire country, even if we were able to get to that.

So, I think that we should look at the national standards primarily and see how well they fit, maybe compare them to where they're really out of whack with Oregon. I don't know that I agree that we should adopt one or the other wholesale. I don't have a problem with saying the misdemeanors and the top levels are a little bit off, we should tweak those. Other people will have a difference of opinion. I don't know what the agency's thought on that is, but that's sort of my thinking on this whole thing. We need to look at this, probably need to be incremental. Let's look at the national standards, keeping an eye on the Oregon standards and just move forward. Thanks.

Chair Jennifer Nash:

Thank you. I see a number of commissioners have questions and before we take those questions, I really should have had Scott make some comments. He's here. Scott Simpson from Moss Adams who was instrumental in putting together the Oregon study. I'm sorry, well, yes, the Oregon study, but also the six-year report and just have him make some general comments about that. But also Scott, if you could also address methodology and the wisdom or lack thereof of mixing and matching different numbers from different studies, if you could just talk about the efficacy of that.

Scott Simpson:

Sure. Thank you, Chairman Nash. We have thought about internally within Moss Adams, the difference between using the Oregon numbers, the difference between using the national workload numbers. For us, it's just math. It takes a little time, but we can go through, and we can input and run the six-year plan with the National Workload Standards. We've done it already with Oregon. So, that component is, again, just math. There are differences between the Oregon study and every one

of the other 17 or 16 studies, as well as the national study. Oregon has certain unique characteristics that drive, that drove, I'll say, some of these numbers. Measure 11 drove, I think, the panels to have some higher decision points on go to trial versus plea. Very consistent with what Commissioner Harris just said. You change that percentage, and the numbers can change pretty drastically.

So, it comes down to, I think the way that it's been teed up, it's a decision point. I don't know that there's a right answer. I don't know that there's a wrong answer. But my opinion would be to choose one or the other, I think, and there's some flexibility in that. You can choose the National Workload Study. You can choose Oregon and still modify the plan a little bit based on what the commission wants to do. The Oregon project was as of a point in time, and the numbers certainly should and would change five years down the road if we were to run a similar type of study. As Commissioner Harris said, there's public defenders that are going to have to unlearn some things and learn some new items as well. When you're dealing with the real excessive workloads that are occurring, I think people develop some habits that, again, have to be unlearned. And as the workloads become much more manageable, certainly some new things have to be learned with that as well. So, again, I don't have an opinion on which direction, but I would recommend that you choose one study or the other just for the purposes of the six-year plan. And again, you can deviate from that a little bit.

Just one last thing that I was made aware of. While this six-year plan is really focused on adult criminal, I have heard, haven't verified, but I've heard that other states, Washington, is adopting the numbers from the Oregon report for juvenile delinquency and dependency. So, there are other states that are looking to that Oregon report for certain information and certainly adopting that, and that's more of just a data point. So, Chairman Nash, hopefully that covers just kind of a high level of a few thoughts on this, and I'll turn it back to you.

Chair Jennifer Nash:

Yes, thank you. Before I call on commissioners, Director Kampfe, would you like to weigh in and talk about these numbers?

Director Kampfe:

Thank you so much, Chair Nash. Yes. So, the statutory requirement is that the commission adopt national and regional best practices for workload and caseload numbers. And so, we

have examples of a national and a regional study that are both relevant to answer that question. And if the commission adopts either the RAND study or the Oregon report, you're going to be in compliance with the statutory direction in terms of what you all are supposed to do. I would highly discourage the commission from adopting some sort of a blend because that would compromise the national and regional best practices. And so, we want to stay intellectually honest, and we want to make sure that we are doing what we're statutorily required to do. And so, I would really say don't look at blending these numbers. Let's either take the RAND study or let's take the Oregon report. Either way, you're going to be doing what you've been directed to do by the statute.

Scott Simpson noted that the RAND study is more limited in scope. It does not cover juvenile delinquency and dependency. To the extent that there is a gap in the national study that the Oregon report does cover, there have been states that have adopted the Oregon report because our study was more comprehensive to fill in that gap. And so, that might be a slight exception is to say if there is no national number, then we would look to the Oregon number. The next piece I wanted to talk about is implementation, and I heard Commissioner Harris talk about maybe changing the goalpost in order to implement. The recommendation would be that we use the caseload numbers, the study that the commission adopts in our six-year plan, and that our six-year plan is in fact an implementation plan to get there. So, you probably don't get to that caseload number in year one. We get there over three biennium, right? And so, within the first biennium, you're at 175% of the number. And in the second biennium, 150%. And then by the third biennium, you're at 100%. So, instead of changing the goalpost, what we would do is we would look at the implementation timeline to phase into that caseload number.

The other point that I want to make that I think is really critical for the commission to understand, and it's the reason we front loaded that budget presentation, is that our current service-level budget is based on MAC. So, the MAC model is what is being used right now by the agency and will be used by the Legislature when they figure out what our baseline funding is. Any request to change a program, so to adopt a caseload number, adopt a workload model, is going to be a policy option package request from the agency. And so, when we think about

changing these numbers, we can't just change them. [Laughter]
We have to get direction from the commission to adopt these numbers and then create a plan, which is our six-year plan, in terms of how we're going to phase these numbers in. And then our requests each biennium will be for policy option packages to be able to get us on the path to implementation of that plan. Thank you.

Chair Jennifer Nash:

Perfect. Thank you very much. Okay. Senator Prozanski.

Senator Floyd Prozanski:

Thank you. I guess I just want first clarification. When I look at the chart that's up that we're looking at now, I'm assuming the way that we should be, or I should be looking at this, when I look at the national plan, it has 2,080 underneath its abbreviation. Then look at the Oregon 2,080 as the two to compare. And then because looks like there's 1,650, 1,650 on each side. My understanding, I have met with a couple of the providers regarding that, the numbers that are there. And I guess, Director, I'm going to ask Jessica a little bit more understanding why. I heard what you said about what the statute requires is, but both of them were talking about doing I'm going to call it some type of a blending, or basically taking the numbers that are in the National RAND 2023, which would be the 2,080 that's on the chart and then taking the MAC and finding something that's in between that would be much more accommodating. So, I'm putting that out on the table for some discussion.

Chair Jennifer Nash:

I would just jump in and say that's the second part of our decision point. Well, our discussion that we have, and then eventually decision point that we have to make is whether we use that 2,080, which is the number of hours, of course, 1,650 or 1,578. So, they really are two different... First, caseload, what's the right number? Do we adopt the national or the Oregon? And then after that, what's the number of hours? And then that will dictate where on the chart you end up. But yes, I think that's right, two different decision points.

Senator Floyd Prozanski:

All right, thank you.

Chair Jennifer Nash:

Commissioner Lininger.

Commissioner Tom Lininger:

Hi, thanks to everyone for your comments. I just wanted to weigh in. I think I'm in agreement with Senator Prozanski and

Commissioner Harris, and also with Mr. Macpherson and his comments at the start of our meeting today, that the number 300 is too high. And I do think one issue I'd like to address based on some of my experience researching and interacting with people who've studied this, the ethical rules and the constitutional standards for minimally adequate representation are not sufficient. I hear some people saying we could rely on the ethical rules and the Sixth Amendment requirement of effective assistance of counsel to ensure that anyone whose public defender is overworked has a remedy, or that public defender agencies would not unduly burden their attorneys. And from what I've studied in Oregon and elsewhere, I really think that that's unduly sanguine. I don't think that the ethical rules or constitutional standards provide any sort of guarantee, and that's where I think we need to step in.

I do agree that 150 is quite a distance from 300. I'm going to try and stay open-minded. I understand Director Kampfe's concerns about needing to land on a particular study. I just feel strongly that 300 is the wrong number, and I'm hearing practitioners also say that. So, I would like for our six-year plan to acknowledge that 300 is the wrong number. But I'm going to keep an open mind because there may be some nuances here I don't fully understand.

Chair Jennifer Nash:

Thank you. I will just say that, I mean, the way the discussion's sort of been framed is that we agree. I think everyone agrees that 300's the wrong number, and the national standard actually says 150's the right number. And it's the Oregon studies and it's 150 at 2,080 hours. And the Oregon study says 93's the right number. So, just to kind of lay this out more starkly, what you have is in the blue shade, that's the National Workload Study. And that's taken, I sent that book to all the commissioners earlier this week, yesterday, that's taken from a number of states, and it's a number that the RAND Corporation came up with based on 18, 19 different states. And then an Oregon study was one of those data points in the national study.

I will say Oregon, if you look at the national study, the data was not the lowest number. There were states that had lower cases in terms of misdemeanors than Oregon even. So, we were not an outlier by any means. And if you look at the numbers just across the board, you can see that really the two, as Director

Kampfe talked about, really it's the two ends that are significantly different. One is the murder cases in the national study are significantly higher than the Oregon study, and then misdemeanors in the Oregon study are also significantly lower. But the other numbers, if you look, there are some of them that the national study says that are coming lower than Oregon. And so really the issue is which one do we adopt? Do we adopt the national study that's based on a large number of states in an average, or do we adopt the one that's specific to Oregon?

And we know that Washington has at least philosophically adopted the national standard. There are many other states that have adopted the national standard. Some have adopted Oregon. And juvenile, we know, I think Director Kampfe told me the other day that there are two or three states that have adopted the Oregon numbers for juvenile. And that's really kind of what we need to decide, is which one are we going to choose? We commissioned – we, the old commission – commissioned the Oregon study and got that. The national study was done on a much broader scale starting in 2020. So, do other commissioners have... Oh, I see Commissioner Harris has his hand raised. Commissioner Harris.

There we go.

Chair Jennifer Nash:

Actually Rob, can I have you hold off a second? I see that Jessie wants to weigh in and she may have some just additional data information. Other Jessie, I'm sorry. [Laughter] Jessie Lenhardt, go ahead.

Jessie Lenhardt:

Thank you so much, Chair Nash. Jessie Lenhardt, Moss Adams for the record. I wanted to make sure that it entered into the discussion and some of those consideration points when we're having these conversations about kind of which national standard to apply and then the impact of that implementation throughout the six-year plan. One of the pieces that was actually surfaced by Malia Brink, who was part of the Oregon study and also development of the six-year plan, is that the analysis of work that could be supported by non-attorney case support personnel was developed using insights gained from the Oregon study. So, when we're thinking of the impact of workload on public defenders and the ability to have case support personnel effectively come in and reduce workloads, that information relies on kind of some of that more regional specific and detailed and nuanced information that's part of the

Oregon study that would just need to be re-evaluated and could be less since we don't have that same type of information available from the national standards.

Chair Jennifer Nash:

Thank you, I appreciate that very much. All right, Commissioner Harris.

Commissioner Robert Harris:

Thanks. This is probably a question for, I guess, the agency, maybe Moss Adams going forward as well, but regardless of what number is selected here, whether it's the national, the Oregon study, I'm assuming then you would develop number of lawyers you would need to do this work based upon your forecasting and would that number, when it eventually got down to contracting, end up being like a MAC, treated like a MAC, like a maximum, or would it be a mandatory? Because if it's treated sort of like we treat MAC now, which is maximum, if it turned out that you needed more time to do cases, it wouldn't affect the contractor, they would just go on and they would report fewer cases done and supposedly their timekeeping would justify that as well. So, I guess the question is, how is this going to be utilized by the agency? Because I could see where that could make a difference in what I would think should happen as to which one should be adopted.

Director Kampfe:

Thank you, Commissioner Harris. In terms of enforcement, I don't know that the agency has gotten all the way through the process of developing how we would enforce the caseload standard. I would note that MAC is just an annual caseload maximum. When we look at the national standard and the Oregon report, you actually have a caseload standard and a workload standard. So, the caseload standard is the number of cases an individual could take in a year, and the workload standard is the number of hours that an individual is working in a year. One thing that Oregon does not currently do is require timekeeping from providers. And the implementation of an hours-based workload standard means that we have to keep time in order to have accountability for whether or not people are working the amount of time on their cases that we would be contracting for. So, I think that that is a key difference in the way that the MAC model is enforced, in the way that a caseload model that is paired with a workload model would be enforced.

And currently, Oregon does do timekeeping in our Parent and Child Representation Program, and so that's the workload

component of that program. So, that's an area where we're doing that, but we haven't done it in adult criminal. Okay. What I'm saying though is that regardless of what we adopt here, no one's going to be at either of these levels starting off, at least in their contract, I guess. I mean, because you're going to have a huge gap regardless of which one of these we adopt next contracting period that you're not going to be able to cover. So, I'm assuming you're going to do some sort of system where you're going to try and work it down. But what, I mean, what's the practical effect over the next six years of whether we adopt one or the other?

Director Kampfe:

That's a great question. Thank you so much. So, right now our current service level budget is being built on the MAC model. So, that means we are looking at how many cases have been predicted through the caseload forecast that was released in April. So, that's how many cases across the state we're expecting will qualify for public defense. We then take our MAC model, which says a lawyer can handle a maximum of 300 weighted misdemeanors, divide that caseload up by the 300 number. That tells you how many lawyers you need, and that's what the agency would get a legislatively approved budget to contract for.

So, if the commission adopts a caseload standard, then what we would do is we would build a policy option package and we would use the same process. We would say, "Here's the forecasted caseload. We are now building a caseload standard based on, say, the Oregon report at 280 hours if the commission directs us to do that," okay? And so then we'd say to the Legislature, "If we divide that forecasted caseload by 280 hours at the Oregon study report, this is how many lawyers we would need in order to meet that need." And we would make a request from the Legislature to implement that through, like, "Give us the money for the difference between the MAC standard and the standard that the commission adopts." We expect that would be a pretty big request from the Legislature, and we also know we probably don't have enough lawyers in Oregon to get all of those cases covered under that new model in year one.

So, what we would do is we would implement that, that over time, and we would break it out over three biennium. So, our request in the first biennium would be for a portion of it, and

then another portion and then another portion. And so over the three biennium, we would roll into the full workload model. So, the implementation wouldn't be 100% in year one, it would be incremental implementation.

Chair Jennifer Nash:

I actually have a follow-up question about that. So, I've been conceptually thinking about the six-year plan with maybe like year one, you say, or biennium one, I mean, you say 2,080 hours, biennium two, it's 1,650, biennium three, it's 1,578. What you're saying is, no, you should pick a number and then over three biennium, just build toward that final number. Is that what I'm hearing you say?

Director Kampfe:

Yes.

Chair Jennifer Nash:

Okay.

Director Kampfe:

And keep the goalposts the same and then make a decision about what your implementation rollout is.

Chair Jennifer Nash:

Perfect. All right. Thank you for that clarification. Commissioner Mandiberg.

Commissioner Susan Mandiberg:

Yeah. So, it may be just the result of sitting here for so long looking at a screen, but I'm getting a little bit dizzy, so I want to make sure I understand this, and Chair Nash's last comment helped me a lot. Thank you very much. But it seems to me that we're needing to balance three different things that may be in some tension with each other. So, correct me if I'm wrong about this, but one of the things is this legislative mandate to adopt regional or national best practices, and my understanding is these numbers that we're throwing around about these different reports or what Washington Bar has adopted, relates to that.

The second thing that we need to consider is the whole recruitment retention issue that Carl Macpherson identified earlier in the meeting. And the third thing we have to balance is how much we think the Legislature will be willing to fund and how we go about getting those funds. And it seems to me that it's hard to balance those three things because if we start slowly, as Director Kampfe is suggesting, that makes sense in terms of legislative funding, and it makes sense in terms of best practices, assuming our mandate is one that we don't have to

fully comply with for six years. But I'm not sure how it addresses the recruitment and retention problem because the crisis that we're facing is much more directly related in some ways to that recruitment retention problem, and that won't be solved if we're taking six years to put all this into effect. So, I'm not sure how balancing those three things leads me to make a rational choice that [Laughter] we're being asked to make today. And if I've got this wrong, I hope somebody corrects me, but I haven't sorted this out yet.

Chair Jennifer Nash:

No, I think that's right. Go ahead, Director Kampfe.

Director Kampfe:

I want to clarify today the direction that we're asking for from the commissioners is which workload study and how many hours. We're going to come talk to you all about this again in June. And when we talk to you about it in June, we can have a more detailed conversation about implementation because June is when we're going to be talking to you about what POPs you want the agency to adopt. So, we could put together a POP that says, "Do it all in year one," and the commission could tell us, "That's what we want you to prioritize, that's what we want you to advocate for in the Legislature."

We could also put together a POP that implements it over three biennium, and the commission could say, "That's the POP we want for implementation." So, that how you implement a piece of it, we're going to talk about it in June, and we're going to have more time to talk about it. What we need from you all today is, in order to get ready for the June commission meeting and to have that POPs conversation about implementation, we need to know from you how many hours and which study to use so that we can build it according to those specifications.

Chair Jennifer Nash:

Right. I think what might be useful because I want to make sure everyone weighs in is I'm just going to call on every commissioner to kind of give me their thoughts. And let's first start because we've been talking about caseload standards, we haven't really talked about hours yet, so I want to talk about regional or Oregon, and I'm going to start with Commissioner Parrish Taylor.

Commissioner Jennifer Parrish Taylor:

I'm like the least qualified person to talk [Laughter] about hours. I mean, I think for me this has always been a concern in terms of, and I think Carl McPherson spoke to it, anytime you have, at

least for me it is a concern, when you have money involved with someone's potential freedom, and so I don't want folks taking more cases than they should have. And I know that we try our best to build this system but it's always going to be a concern. And so I think for me, I think we have to have an Oregon-specific model but I'm also open to either. Because again, I'm not a practitioner. I don't do the work. I don't know what that looks like. But I think for me, the lower the kind of hour amount the better.

Chair Jennifer Nash:

I appreciate that. Commissioner Wright.

Commissioner Jasmine Wright:

I think it needs to be the Oregon-specific number and I think it needs to be the low end. I think crafting the number that's specific to our state and the low end makes the most sense, especially in terms of what we can ethically bill. And when I look specifically at the public comment, I think one of the public comments that we got indicated that even that 1,578 number was a number that probably couldn't even be ethically billed as is. So, certainly of what we're dealing with and what we have to choose from, I think the low number of the Oregon-specific is what we should be looking at.

Chair Jennifer Nash:

All right. Commissioner Buckley.

Commissioner Peter Buckley:

Well, I think I rival Commissioner Parrish Taylor with my lack of experience in this field. And so I am similar saying, "Well, I lean towards the lower number, but I'm open to the national if the national's better. Something that we can compare how's Oregon doing with other states and that gives us a kind of standard to basically look at, "Here's Oregon, here's what's happening nationally." I like that. I think that's a positive thing. But I do, I lean towards the lower number as well just because the information we've gotten from practitioners is that they can't bill for every hour, and assuming this kind of impossible workload is just not going to get us where we need to go to. Thanks.

Chair Jennifer Nash:

Thank you. Commissioner Selander.

Commissioner Robert Selander:

I support the Oregon-specific. I'm not sure I have enough information to say I support the low number. And while I appreciate practitioners are saying anything other than the low number or even the low number is problematic, I'm not there

yet. I'm not sure that some of that's not self-serving and that's not a critical statement that's just an observational statement.

Chair Jennifer Nash:

All right. Thank you. Commissioner Prozanski.

Senator Floyd Prozanski:

All right. Thank you. First of all, these comments are coming from a non-voting member, so please keep that in mind. The bottom line for me, I guess first of all I'm going to ask if Director Kampfe or someone from your staff can send to me where in Senate Bill 337 gives us the either/or. I'm assuming it's buried within that 81 pages somewhere. I'd like to look at the actual language that's in the bill. I don't agree with that it has to be either/or. I think it has to be something in between. Based on my conversations with two of the larger providers in the state, it seems to me that we should be looking and striving for the national 2023 RAND Study and then looking at what we have as the OPDC MAC and somewhere in between there. I do not see how we are ever going to get, at this stage, what the ABA Oregon, if this is the plan that people are talking about, the '22, to those type of numbers.

Based on the crisis we have right now, not even having enough attorneys to do what we need to be doing, to say that we're going to be able to drop it down to, and I'm just going to use the numbers that are on the chart that I received, 2022 ABA Oregon project for low-level misdemeanors is 93. For the RAND 2023, 151. And then the OPDC MAC is 300. Those numbers, that if we're going to use an Oregon plan, that would be that project from ABA, I have to be very frank here. I think that's really pie in the sky. I just do not see any way that we have the capacity of attorneys in this state to be able to get to that type of number.

It does seem to me that when we are looking at, and I think we can in fact go back to the Legislature by having a blended plan that says, "Here's the national number. We know that we are not able to get down to that number at this point." That's something we might want to be striving for, but in the end we need to be just getting a blend between those numbers and the MAC. And then I think over the three-biennium approach, something that the Legislature would be able to budget for and would be much more easier to accommodate. And I also believe the courts themselves would give the state a little bit more latitude knowing we actually have a plan that we're implementing, and as long as we stay on task, that they would

not be adverse to us proceeding through that process. That's what I've got. Thank you.

Chair Jennifer Nash:

Appreciate it. Commissioner Lininger.

Commissioner Tom Lininger:

Thanks to everyone for your comments. I guess I'm inclined to favor the Oregon model if only because the distribution of case types seems more suited to the reality of our statutory scheme, Measure 11 and all that. And so among the Oregon options, 1,650 and 1,578 seem to be the ones that appeal to me. I know that it'd be great if we'd go the lowest possible one, but 1,650 is the middle option, and I guess that'd be better than the worst-case scenario. I do hope that we'll do all of this with an eye toward reducing the MAC. The MAC seems too high. And a blended model, if we could do it, makes sense to me, but I don't know if we can do it.

Chair Jennifer Nash:

Thank you. Commissioner Mandiberg.

Commissioner Susan Mandiberg:

Sorry. I think we have to pick a caseload standard that allows us to recruit and retain lawyers, and I agree that we currently don't have enough lawyers in Oregon to meet our goals, but we're not going to be able to get enough lawyers unless we make it attractive to be a public defender in Oregon. And as someone who has counseled numerous students about whether they should stay in Oregon or leave or whether they should become criminal defense attorneys or something else, I think it's a challenge to get people to do this work in Oregon. So, I agree that we should be looking at an Oregon-specific number. And I, again, have trouble picking a number without knowing the implementation plan. I would like to work toward 1,578. If we can't pick that now because we have to pick one number now and not change it for six years, then I guess it makes sense to have the middle number that's higher, but I don't like it.

Chair Jennifer Nash:

I think there's two considerations, although they kind of do go hand-in-hand, of course, and that is the caseload and then the hours. So, I mean, I think it's perfectly reasonable to say, "Well, I want the national number of 1,578," and adopt that. I mean, in fact, that's what I'm going to say when it's my turn. So, I think it's too... Because there's more than one way to get to where you want to get to, right? So, if you're looking at just numbers, then how do you get to that number? And I think maybe that's what some people are talking about with blended. I mean, I

think first, we have to pick the caseload number before we start talking about hours, and so that's really kind of, I think, where we need to start.

Commissioner Susan Mandiberg:

Well, I agree with you, but I think that, at least when I've talked to students and they're... Recently I was dealing with a student who was trying to decide between a public defender job in Washington and a public defender job in Oregon. And the number that stood out for that person was a caseload number. So, I would like to see a low caseload number. [Laughter] That once that person gets into the job, all of a sudden hours start meaning something. More than caseload in a sense because sometimes you can deal with caseloads efficiently, or at least people learn how to understand which cases are going to take more hours. But in terms of recruitment, I think people focus on caseloads because they don't yet know enough if they're new to focus on hours. The hours seem to come in once people find that they're staying up till midnight five nights a week and also working on weekends.

Chair Jennifer Nash:

Thank you. Commissioner Harris.

Commissioner Robert Harris:

Yeah, I agree with a couple of other commentators that the hours and the standards are going to work together. I am honestly pretty stuck on the 1,578 hours because I think that's realistic. I think to Susan's point with her student, you can just say, "Look, the billable hours for this is a lot less." We'll call them duty hours, is a lot less, so they can count on not spending too many midnights at the office. The other reason, however, is that when these caseloads were developed in the study, in the Delphi study, they didn't based it on 2,080 W2 hours. They based it on how many duty hours you're actually working, it's like billable. So, to be consistent, I think you need to use the same standard, you need to use the same multiplier for this, and 1,578 is actually hours worked on cases, which is what the studies are. How many hours do you actually work on the case, not how many hours did you take on your two 15-minute breaks or your team meetings or to talk to your supervisor or to chat with your staff person for a mental health break for both of you. They don't count that. They don't count 2,080. It's 1,578.

It's also a parity issue because, again, we talked about this, and I thought we had adopted it as a parity issue if nothing else, that we have to be treated the same. Hours are a sort of... Time is

compensation. Not being in the office is part of your compensation. So, I think 1,578 is the number. We'll talk about that later, but that does relate to how I'm looking at the standards. And I'm sort of looking at, like, which column here do I want to adopt? What are these caseloads under these different columns? And I'm looking at the national, the NPDWS standards, which I think is sort of the meta study, as I'll call it, of the different reports. And at 1,578, looking at those numbers on that column, looks about right to me. Having done this work, having done the work myself, having managed teams of lawyers for some 25-plus years, this would be a great number. It would be much more than we have now.

I think it's important that we keep with 1,578 for a couple of reasons that are going to be downstream from this conversation. It's going to be part of the hourly study as well. And so I think that it's important to keep both of these in mind as we make this decision. Over six years, if we could get to that column of 1,578 national standards, I'd be pretty happy. It should be better probably in some of these areas but looking at it I like that number. I like that column. And knowing that I'm going to make a big push for 1,578 the rest of this meeting and then some probably, I would go towards – and taking into account what Senator Prozanski said as well, this is only a six-year horizon, taking into account what Susan talked about recruitment and retention as well. I think that I would, given the choice of either column A or column B on the [Inaudible 00:46:13] NPDWS, I would go with, based on my other decisions or advocacy that I would make, I would go on the national standards.

Chair Jennifer Nash:

Thank you. I think I've got everyone. Yeah. So, I'll kind of give my feeling about this. So, after I've been telling everybody to look at these two things separately, I look at them together. [Laughter] I mean, we've already talked about how we all... I think we've reached consensus that 1,578's the right number. I mean, that's... Yeah. So, I'm not looking at the 2,080 or the 1,650 column. I'm looking at the 1,578. I'm a pragmatist. I mean, I'm aspirational and I am progressive, but I'm also... I guess I'd call myself a progressive pragmatist, and I look at the Oregon 1,578, and I think Senator Prozanski, who isn't on Ways and Means, but Representative Evans who isn't here is, would laugh us out of the Legislature if we tried to go in and that's what we want the standard. We would have a very hard time... Those are

less than, in some cases, private bar numbers. So, I would say... Actually, that's not true. Almost in all cases they are less than private bar numbers. Except maybe felonies, I mean, I can't see taking that many felonies a month. The misdemeanor low number on the Oregon...or misdemeanor high number on the national study, that's six cases a month. I mean, that's pretty low, when you compare it to 300 which is what the standard is now. It's astonishingly low. It's the right number. I'm not sure 43's the right number, which is what you get in the Oregon standard. You divide that by 12 and it's less than four cases a month. I'm not sure we can go in with a straight face to the Legislature and say for public defense that's the right number.

So, that's kind of where I lie in on this. I think you'd be hard-pressed to find a single provider in the state of Oregon or nationally who would say, "I'm not coming to Oregon if you adopt 1,578 and the national numbers because that caseload's way too high." That's not happening. It would be a pretty aggressive progressive adoption, I think, to take the national numbers. I also know I've been... I've had the benefit or detriment, depending on how you look at it, of appearing in front of the Legislature a number of times, where I've heard legislators talk about the Oregon study. And I have a lot of faith in the Oregon study. I think the Oregon study, the methodology was good. I like the study, but I know they don't. There are legislators that don't like that study. They just think that it's self-serving and they laugh about it and hold it up and want to use it for kindling. So, not saying that we should make our decisions based upon... We've been spending way too many years making our decisions based on what we think another branch of government will do, but as I said I'm also a pragmatist. I think the national numbers are well researched and well sourced, and we'd have a very... They're unassailable, I suppose, because the study is as big as it is, and it's a national study. So that's my thought. Commissioner Parrish Taylor, you have your hand raised.

Commissioner Jennifer Parrish Taylor: Yeah. I hear your critique, but I also would say that we have not as a commission done anything to build those relationships with legislators to make the case as to why we are saying the number is the number. And so one thing I would add is that if we are deciding on a number, we also need to have a plan as individuals to build those relationships so that we can be effective in Salem and be successful in getting the dollars that

we need. Because I would laugh at us as well if we came with this number without actually giving any context or having any relationship.

Chair Jennifer Nash:

Commissioner Buckley.

Commissioner Peter Buckley:

Right. Just to bounce off that a little bit. When the Legislature passed 337, to my mind, they were telling us, "Do the study. Come back to us and tell us how much will it cost for us to have an effective public defense system which includes the recruitment and retention issue." So, I do lean to... Rob's expertise is far beyond mine. I listened to what he said. It made total sense to me, being somewhat of a layman in all this. So, I would be supportive of the national 1,578 to be able to make the argument of parity, to make the argument of a national standard we're addressing things to. And if there's pushback on, as Senator Prozanski said, the Legislature might come back say, "We can't afford 1,578. Let's talk about what we can afford, how to adjust it." But I think we would be answering the Legislature's call by saying, "You asked us how much would it cost, what would it look like. This is how much it would look like, and this is how much it would cost." So, I would back the national 1,578.

Chair Jennifer Nash:

Okay. So, here's what I have. Commissioner Parrish Taylor, Oregon. I'm assuming everybody's 1,578, right? Okay. So, Oregon 1,578. Commissioner Wright, Oregon, 1,578; Commissioner Buckley, national, 1,578; Commissioner Selander, Oregon, 1,578; Commissioner Prozanski for discussion purposes, national, 1,578; same thing with Commissioner Wright. We're not voting, but still. Commissioner Harris, national, 1,578; Commissioner Mandiberg, Oregon, 1,578; Nash, 1,578; and Lininger, Oregon, 1,578. Which is definitely not a majority or consensus. So, further discussion? Anyone want to chime in or change their mind or have anything else they want to talk about or questions they want to ask? Commissioner Buckley, you still have your hand raised. Is that an accident? Okay. Commissioner Lininger.

Commissioner Tom Lininger:

The number 1,578 appeals to me, and I assume as someone who has not practiced criminal defense in Oregon, that it would be preferable to have the Oregon distribution of those hours. But having heard from Commissioner Harris and Chair Nash, I'd be amenable to switching to the national 1,578.

Chair Jennifer Nash: All right, thank you. Commissioner Mandiberg. You're muted.

Commissioner Susan Mandiberg: There we go. My practice days are way in the past, but boy I sure do remember struggling with large caseloads even then and spending nights and weekends in the office. So, ideally, I prefer the Oregon 1,578, but I understand the practicalities that have been outlined in terms of dealing with the legislation or with the legislators. I agree with Commissioner Parrish Taylor that if we're going to go with the Oregon 1,578, we need to do more to build relationships with legislators. And I think that means each individual commissioner being willing to, first of all, be trained in how to be effective in working with legislators, and second of all, agreeing in serious way to devote some of our time to sitting down with legislators one by one and building relationships and not just going and testifying at the Legislature. And so I guess I'd like to hear whether individual commissioners have the time and the willingness to do that work in addition to everything else we do on the commission. Because if not, then I think it's impractical, reluctantly I think it's impractical, to go with the 1,578. And I would probably switch to the national standard.

Chair Jennifer Nash: Do you mean the Oregon study not the...

Commissioner Susan Mandiberg: I mean the Oregon.

Chair Jennifer Nash: Okay.

Commissioner Susan Mandiberg: I think without that commitment on the part of commissioners, it's impractical to go with the Oregon 1,578, and I would be willing to switch to the national 1,578. I don't want to enter into something that we are not willing to put our time into making happen effectively. I guess I'd like to hear from people whether they have the time and the willingness to do more sitting down with legislators and building relationships. I personally am willing to do that, but I understand that I'm a retired person, and so I have more time than people who are currently working full-time jobs in addition to being on the commission. So, I am not willing to make that commitment for other people.

Chair Jennifer Nash: Commissioner Selander.

- Commissioner Robert Selander: I will switch to the national 1,578. I won't directly answer Commissioner Mandiberg's request, but I think even the national 1,578 is going to be a difficult sell to the Legislature.
- Chair Jennifer Nash: Yeah, I mean, no matter what we're going to have to talk to our legislators. And I think the plan is... Well, I shouldn't say plan. We're exploring having some training to be able to do that. Commissioner Wright, do you have any other thoughts after our discussion?
- Commissioner Jasmine Wright: I'm all for engaging Legislatures as needed. I'm all for Commissioner Mandiberg's ideas. And honestly, after the discussion, I'm okay with either the Oregon or the national standard at 1,578.
- Chair Jennifer Nash: Okay. I think where that puts us according to my notes... Oh, Ms. Taylor, did you have something you wanted to say?
- Lisa Taylor: I was just going to chime in that Commissioner Smith and I had discussed exactly what Commissioner Mandiberg's talking about, and we're trying to schedule a Legislative Committee coming up, and I think that's going to be one of the first topics of conversation is commission members' engagement.
- Chair Jennifer Nash: Thank you. Okay, so I think according to my notes where we end up is that Commissioner Parrish Taylor is still in Oregon and Commissioner Mandiberg is in Oregon if...
- Commissioner Jennifer Parrish Taylor: In the chat I just put I'm also open to switching, so I would go to national.
- Chair Jennifer Nash: Oh. I didn't see the chat. Oh, I could stop sharing my screen and then I could see the chat. Okay. All right, I see that, okay. So then we just have Commissioner Mandiberg, who I think is saying, "Tell me what I need to say, and we all need to talk to our legislators." All right. So, Commissioner Mandiberg, are you okay with the national study 1,578?
- Commissioner Susan Mandiberg: I'm okay with the national study.
- Chair Jennifer Nash: Okay. And with that, I think we have consensus, and the agency has direction and Moss Adams has directions, which is we want to adopt the National Workload Standards, although we should talk about juvenile because the National Workload Standards

don't have a juvenile, but Oregon does. Is everybody okay with picking the Oregon numbers for juvenile? Okay. Everyone's nodding. So, the Oregon numbers for juvenile, National Workload Standard using 1,578 under both scenarios for workload. Any comments or questions? Director Kampfe.

Director Kampfe: No, that's great. That is the exact type of direction the agency is looking at in order to build out our next step so that we can come to you in June with options for an implementation strategy.

Chair Jennifer Nash: Great. Commissioner Harris, I didn't see your hand raised, I'm sorry. Go ahead. You're muted.

Commissioner Robert Harris: Sorry. Just wanted to let Lisa know, Susan as well, that I have a pretty close relationship with Senator Sollman who's the co-chair of PubSaf [Phonetic 01:00:13], and if there's a meeting that you want to get together please let me know so I can chat with her as well.

Chair Jennifer Nash: Okay. I want to do a time check. We have one other big item on the agenda, it's going to take probably an hour, that's the rate and economic survey, Moss Adams, we could do that now. Or actually...

[Crosstalk 01:00:41]

Director Kampfe: I actually don't think we don't could do that now because we're missing Scott. Oh, we have we have Jesse here, maybe we could.

Chair Jennifer Nash: Hold on a second. Do you need a roll call? I think it's unanimous in the voting members of the commission for 1,578 and the national study, with the Oregon numbers for juvenile. Do you want a roll call vote for that?

Director Kampfe: Chair, if you could do a motion for it first and then actually do an official vote that would be helpful to me.

Chair Jennifer Nash: Okay. So, I'm going to ask Commissioner Buckley to make a motion since he raised his hand that the commission will be adopting the National Public Defense Workload Study for adult criminal cases, the Oregon Public Defense Study for juvenile workload standard with 1,578 hours as... caseload, sorry, with

1,578 as the workload hours. Oh, my gosh. Let me try that again. The National Workload Study for adult criminal, the Oregon study for juvenile, using 1,578 hours per year.

Commissioner Peter Buckley:

So moved.

Chair Jennifer Nash:

Thank you. And is there a second? Commissioner Parrish Taylor seconds. And the voting member... Well, actually, we're on video so I need to take a roll call vote.

Director Kampfe:

And I can facilitate that. Commissioner Mandiberg.

Commissioner Susan Mandiberg:

Yes.

Director Kampfe:

Commissioner Wright.

Chair Jennifer Nash:

Is non-voting.

Director Kampfe:

Oh, non-voting, thank you. Commissioner Selander.

Commissioner Robert Selander:

Yes.

Director Kampfe:

Commissioner Harris.

Commissioner Robert Harris:

Yes.

Director Kampfe:

Commissioner Parrish Taylor.

Commissioner Jennifer Parrish Taylor: Yes.

Director Kampfe:

Commissioner Buckley.

Commissioner Peter Buckley:

Yes.

Director Kampfe:

And Commissioner Nash.

Chair Jennifer Nash:

Yes.

Director Kampfe:

Thank you. The remaining commissioners are not present.

Chair Jennifer Nash:

Thank you, all right. So, Moss Adams can come back at a later meeting and present on the hourly rate and economic survey or we can push through and do that now. What are people's preferences? Wait, this is not an action item, so it's

informational. We're missing a handful of commissioners. When does the agency need this information by, the June meeting?

Director Kampfe:

We would be building POPs to make a request to fund panel attorneys starting in June of 2025 based on the commission's decision, so at the June meeting we will need the commission to vote on POPs for the hourly rates.

Chair Jennifer Nash:

So, we need to identify what the hourly rate is before that. But that's an action item, is it not?

Director Kampfe:

So, we were planning on briefing you all today on it and based on the discussion moving forward with the POPs built out, and then we would need you all to do an action item on adopting a particular POP in June.

Chair Jennifer Nash:

Okay. So, you weren't expecting us to vote on an hourly rate today?

Director Kampfe:

We were not because this is the first time that this report is coming in front of you, and we wanted you all to have an opportunity to consider it. It is a draft report still so we're not expecting an action item today.

Chair Jennifer Nash:

Okay. So, do people need to leave in the next half hour so? Yeah, I have people nodding, yep, okay. So, would it be possible to tag this on to the executive session, or do you want to wait until June?

Director Kampfe:

I will ask Mona to send out a poll to everybody on the executive session dates and to plan to have it be an executive session related to litigation and then a commission meeting to follow on the hourly rates.

Chair Jennifer Nash:

Okay. And then maybe we just allocate... There's 45 minutes on the agenda, let's allocate an hour just to make sure we have enough time. And let's make it an action item too, possibly, possible action item.

Director Kampfe:

We'll publicly notice it as a possible action item.

Chair Jennifer Nash:

All right. And if there's... Well, we have an executive director's report, let's do anything that we haven't covered, Director Kampfe, already, why don't you just tell us now?

Director Kampfe:

My director's report was very short. If Mona's still here, she could probably pull it up for me. Thank you. Just updates for you all that we have our open house for the Trial Division, and that is going to be tomorrow in the afternoon. It's in our Salem office. We would love to have commissioners come and participate and meet folks. We've invited a number of people from the Legislature to come over to the office and to hear a panel discussion from our staff about how the buildout is going. We have upcoming May Legislative Days in the end of May. We'll be presenting the Comprehensive Public Defense Report to the Judiciary, as well as four different reports to Ways and Means, and we have two requests pending in front of the Emergency Board...or three requests, excuse me, pending in front of the Emergency Board for funding in the May E Board, so we'll be able to report back to you all about how all of that went when we see you in June.

And we will be seeing you in June at OCDLA's annual conference which is in Bend, Oregon, June 13th to 15th, and the commission meeting will be a hybrid meeting, but we would love to have as many of you as possible in person at that commission meeting. It's a really great opportunity to connect with our provider community, as many public defenders throughout Oregon are members of the Oregon Criminal Defense Lawyers Association and attend this conference in person. And so it's a great opportunity for the agency and the commissioners to meet with providers and hear directly from them. And I would expect we'll have quite a bit of public comment at our next coming commission meeting with providers appearing in person and wanting to talk to the commission directly. So those are my updates. Thank you.

Chair Jennifer Nash:

Thank you. All right. And then Mona will send out an email about interim meeting that we'll have in the next couple of weeks, and please respond to those promptly. With that I will entertain a motion to adjourn.

Female:

So moved.

Chair Jennifer Nash:

And a second? All right, lots of people second. Any opposed? No. All right. The meeting is adjourned. Thank you very much, everyone.

Title: May 8, 2024 OPDC Video part 2

Commissioner Peter Buckley: Thanks, everyone.