

Chair Jennifer Nash: Good morning and welcome to the August 20th, 2025, meeting of the Oregon Public Defense Commission. I am Jennifer Nash, the chair of the commission, and we have a number of items on the agenda today which are updates and briefings. We have a number of people who have requested public comment, and we'll get started with that in a minute.

But before that, I just wanted to make a brief announcement that my term on the commission expires January 1st, 2026, and I have sent a letter to the Speaker of the House who is the recommending authority for my position, informing her that I will not be seeking re-appointment in January. So, there will be a new commission person who will be appointed, and in the coming weeks, Director Sanchagrin and I will send a list of qualified people. My position is a person who has expertise in criminal law or juvenile law or is a person with experience in advocacy for criminal law or juvenile law. So, we will send a list of qualified individuals to the Speaker for her consideration, for recommendation to the governor's office, so that hopefully, we can have a smooth transition and identification and appointment either on January 2nd or shortly thereafter. So, Commissioner Lininger.

Tom Lininger: I know we don't have agenda time set aside for this, but since you mentioned it, I just wanted to salute you for your fantastic service to the State of Oregon, to the public defense community, to everyone involved in the criminal justice community, and for your sincere and highly scrupulous efforts to close the justice gap. I've observed you in action for two years, and I know you've done this work for far longer than two years. I think your leadership has been fantastic. You've been candid, you've been highly ethical, and I think it's a huge loss. Although I want to continue with the commission, I just think your leadership is irreplaceable. I know you made significant sacrifices to do what you've done in terms of foregone professional opportunities and putting up with a lot of grief for a problem that is not of your making. And so, I just wanted to salute you for that great work. Honestly, I've been in state government for decades, and you're one of the best leaders I've met in state government.

Chair Jennifer Nash: Thank you. I really appreciate your very kind words. And although I would beg to differ that I'm irreplaceable, and I'm hoping that I will be replaced, [Laughter] though the commission will have to consider who will replace me as chair later this year. I anticipate that will be in December, and I'm going to be actively encouraging and recruiting people on the commission to step into leadership role. I know that the vice chair may be able to take over as chair in January. I'm also hoping that Commissioner Harris will step up and potentially be in a leadership role, and I'm encouraging other people who are interested to let me know so that we can help facilitate that. But thank you again for your very kind words. I really appreciate it.

All right, moving on to public comment. As I said, I want to acknowledge the requests we have for verbal comment and the folks who have submitted written comment. So, written comment will be published on our website, and we've received written comment from Shelley Fuller, Jennifer Myrick, Carol James, Brandee Dudzik – I'm sorry if I pronounced your name incorrectly – Nicole Thomas, Olcott Thompson, Jodi Ann Russell, Nicki Fox-Morse, Dana Brandon, Sunshine Ward, and Jodi Warne. And we have requests for a verbal public comment from Carl Macpherson, Grant Hartley, Kevin Neely, and Marcus Gibson. So, I'll start first with Mr. Macpherson. Yes, I see him. Mr. Macpherson, whenever you're ready, you can begin.

Carl Macpherson: Good morning, Chair Nash, members of the commission, Executive Director Sanchagrin. My name is Carl Macpherson. I'm the executive director of Metropolitan Public Defender and a member of Public Defenders of Oregon. First, I want to say that I completely agree with Commissioner Lininger's comments, and I am disappointed at the news that you announced, Chair Nash. I have seen how incredibly hard you've worked in your role on the commission, and you are going to be a tremendous loss given the wealth of knowledge, your understanding of the system, and how hard you've worked and all that you've done. So, I just want to say that. Personally, I'm saddened and disappointed to get this news. I was not expecting that. In terms of public comment, I want to talk about the contracts, acknowledge and understand that we are in a very difficult situation, both in public defense and as the commission, and in the state for many reasons, including what's going on federally. But there are aspects of the contracts I feel as though, I believe all of you understand, but I believe need to be put on the record.

So, first, regarding MAC and the lack of a workload model. In 2021, the legislature established that OPDC should establish a state workload model for public defense. That has not occurred. The MAC system is just wholly insufficient and does not work for public defense. I know that you all know this, but I want to put that on the record. There are disparities within the system, and the idea that we cannot move to workload model is belied by the fact that PCRPP has a workload model. The State Trial Division, according to the website, is on a workload model as well. And that the data is associated with the National Public Defense Workload Study and the RAND Study, the dashboard shows that the State Trial Division is using different case types than what MAC is associated with in the contract.

I believe it's very important to have a State Trial Division. I'm not saying they're not working hard. I believe they are working extremely hard. Just as a provider, we would like to see a reduction of the disparities in workload between the full-time providers and the State Trial Division in terms of the transparency of what they're doing, and the idea that the statute requires a workload model for all,

not just the State Trial Division. So, full-time providers should also be on a workload model and that's been the law since 2021. This is extremely important, not just because of the National Public Defense Workload Study in 2023, but the Washington State Bar proposal that was approved by the Supreme Court on June 9th of 2025, moving to reasonable workloads and caseloads in the State of Washington, which is going to have a detrimental effect on our ability to recruit and retain our attorneys.

The Washington State Bar proposal has been contained within the King County Public Defender in Seattle's advertising for quite some time, and that advertising is now in the Oregon State Bar Journal. So, every month, there's a full-page ad from King County indicating that they offer pensions, caseload controls consistent with the National Public Defense Workload Study, and higher salaries than we're able to offer. That is really detrimental to recruitment and retention. It is another reason why we need to move towards a workload model. We lost three or four recruits last year to King County for those three reasons.

Next, the contract talks about ethical requirements. And of course, that is what controls, but it doesn't list the formal opinion that we have from the Oregon State Bar. The Oregon State Bar has weighed in on public defender caseloads since 2007. The state contract should include Oregon State Bar Formal Opinion 2007-178 written in because that is what controls a public defender's workload and when they have to make considerations as to not accepting new appointments. It should be in the contract.

Next, the legislature talked about cohorts and the ability of public defenders to hire cohorts. We have to do that. You have to recruit nationally a year in advance to be able to get the quality of applicants that you need to provide effective and ethical representation in the state. MPD has 17 attorneys starting this Monday. I do not know whether those 17 attorneys are going to be funded by the state under the state contracts. Multnomah County and Washington County have, I think, are the two highest numbers of unrepresented in the state. In Washington County, it's absolutely the fact that the supply and demand does not measure up. Washington County case filings are going up 28% this year to date. We don't have enough attorneys. So, we are doing our part to bring more attorneys in the system.

We need to know that that's going to be funded by the state. Sixteen of those 17 attorneys took the bar in July. So, the next six weeks they're going to be training until they receive their bar licenses. We need to know that we're going to actually receive training supervision funds from the state in the new contract. It's silent currently. And I have concerns about the state and OPDC continuing to fund training and supervision. Nonprofits are doing the overwhelming majority

of training and supervision in the state. We brought in over 150 attorneys in the last six years. Our training and supervision program has been developed for decades and continues to get better and more refined and is why we're able to recruit and retain because every recruit we talk to says that's one of the reasons why they're coming to our office is because of our training and supervision. It also establishes an attorney, so they feel comfortable and know that they know what they're doing when they start practicing, and that helps with retention. And most importantly, it ensures effective and ethical representation.

The last thing I want to talk about is investigation, and that is this. For years, we were funded at \$32,000 per investigator. That wasn't even half of the actual cost for salaries and benefits. It then was bumped up to 75,000. The current contract says 80,000. Our actual cost is over \$100,000, and we have over 20 investigators because you have to provide ethical and effective representation. I just want to put on record, MPD takes a hit of about a half million dollars every year on investigation that's not funded. I understand there's funding [Laughter] issues in the state and with the contracts. I totally understand that, but I need that on the record that that is something that needs to be fixed. Because if MPD were to say from a business perspective, it makes more sense to not have staff investigators and do a PAA process, that would cost the state a significant more money than what we're providing to the state and not being fully reimbursed.

I said that was the last thing. Last thing quickly. Exhibit B, section M, is extremely problematic. It essentially appears to say that if an attorney goes out on bereavement vacation, is the victim of a crime on FMLA or otherwise, that either the contractor can just absorb their MAC or put in a notice saying to remove their funding. To say that's problematic is an understatement. So, I wanted to put that on your radar. Thank you for all that you're doing. I greatly appreciate it. I look forward to working with you going forward. Thank you.

Chair Jennifer Nash: Thank you, Mr. Macpherson, and thank you for bringing up those specific points. I'm sure the agency will be responsive to them, and we'll address them with you specifically. And I know we're not really supposed to like comment on public comment, but this is going to be on the agenda later. The information that's coming back to the agency and the commission regarding concerns about contracting gets then addressed and put back out into the frequently asked questions. And if that does not happen and there are still questions, I know the agency is trying to be very responsive about those to make sure that all of the concerns are addressed. So, thank you for bringing up very specific things so that those could be addressed by the agency. Mr. Hartley.

Grant Hartley: Yes, Chair Nash, members of the commission. My name is Grant Hartley. I'm the Multnomah County Director for Metropolitan Public Defender. I would also like to start by thanking you, Chair Nash, for your service and your leadership during

this very difficult time. I will be focusing my testimony on the importance of supervision. I am confident about the ethic, excuse me, I'm confident about the effective and ethical representation that our attorneys here at MPD provide because I know the scrutiny they're under. Our supervisors conduct regular check-ins, hold weekly case staffings, observe trials and motions, solicit feedback from judges, and conduct file reviews, both randomly and in response to concerns and complaints. This supervision is necessary to ensure that our clients receive the competent and zealous representation that they are constitutionally entitled to, and it is not just necessary for new attorneys, but for attorneys of all qualifications and experience levels.

This job is exhausting, and after years of practice, attorneys can become jaded or cut corners. Too often in public defense, years of experience is mistaken for quality of representation. Even OPDC's qualifications focus on years of practice and numbers of trials without consideration for the quality of representation provided over those years and in those trials. Supervision is that quality control, but only if it is meaningful. Meaningful supervision requires above all unrestricted access to client files. This access provides a window into what is happening behind the scenes, how often the attorney is meeting with clients, what advice they are providing, the legal research and investigation being done, and so much more. You can observe an attorney's performance in trial, but if you don't know what investigation they did, what experts they consulted, what issues they may have missed, then you cannot adequately assess that trial performance. You can take a complaint from a client, but without access to the client's file, your investigation is limited to what that client's attorney tells you.

Despite the importance of supervision, the majority of public defenders in Oregon have none, zero. Which I know this commission understands, but as you seek to address it, both through this contract and future actions, I'm asking you to please not water down supervision. Please make sure that you implement a model that provides actual supervision with meaningful enforcement and unrestricted access to client files because without that, it's not supervision, and it does not provide the quality control that is so desperately needed in this state. Thank you.

Chair Jennifer Nash: Thank you, Mr. Hartley, I appreciate it. Kevin Neely.

Kevin Neely: Thank you, Chair Nash, members of the committee. For the record, my name is Kevin Neely, and I'm here with the Oregon Criminal Justice Truth Project. Chair Nash, Vice Chair Mandiberg, thank you so much for your service. My comments today are directed towards the docket item entitled "Unrepresented Persons in Oregon Courts: Attorney Shortage." Additionally, I note that our organization submitted comments on the proposed contract revisions, which I encourage you to consider. As to the Unrepresented Persons in Oregon Courts docket item, I

note that for nearly a year, the docket item itself states that the cause is an attorney shortage. Yet again, this month, there is no documentation in the docket on the number of attorneys hired, the number of attorneys departed, or the caseloads for those attorneys.

We are now approaching four years of unprecedented and unacceptable numbers of unrepresented defendants and delay for victims in the community. The explanation provided meeting after meeting and hearing after hearing is attorney shortages and challenges in recruitment and retention. Yet there is now double the funding and significant caseload limits. The refrain of inadequate pay and oppressive workloads must be tested. Likewise, assertions of inadequate numbers of attorneys must also be examined. The challenge continues to plague only those counties that rely heavily on nonprofit defense offices. Yet over these four years, I am unaware of any comprehensive audit in any of these counties or any of these offices.

Before agreeing to any new contract, it is essential the commission undertake comprehensive audits in some or all of the affected counties. The defendants, the victims of crime, and the public need reassurances that the funds that are being allocated to those offices are being spent as required and as expected. The data and specific practices, such as the Washington County case in which MPD attorneys represented at least one defendant who was not indigent, suggests the funds are not being expended appropriately. The proposed contract on its face appears better than the current contract, but the commission and the public cannot fully assess the impact of any contractual changes without more information about how the money has been expended over these four years. I thank you for the time to testify, and again, encourage the commission to undertake these audits. Thank you so much.

Chair Jennifer Nash: Thank you for your comments. All right, and I have been informed that Marcus Gibson has not logged in, and so we will not have any public comment from that person. Okay, moving on next to an update from the agency regarding the unrepresented persons in Oregon courts attorney shortage.

Ken Sanchagrin: Good morning, Chair Nash, members of the commission. For the record, Ken Sanchagrin, the executive director here at the Public Defense Commission. I just have a couple brief slides and some information to update on the trends we're seeing in the unrepresented crisis across the state. So, Mara, if you could move to the next slide, please. So, this shows the basic breakdown. Essentially, what we're showing here is the data from OJD's unrepresented persons website overtime information, and it's broken down by in custody, out of custody, and then probation violation and non-criminal case types. What we're seeing here, and I think what is one of the most positive takeaways is a downward trend, especially since earlier this year in the number of unrepresented folks across the

state. And as we'll see on the next few slides, this is a trend that we're seeing in all of our crisis counties, that when we think about the traditional big six crisis counties, even though those trends are more significant in some of those areas compared to others. So, let's transition to the next slide, Mara, for a little bit of that detail.

One of the areas that we're the most excited about is Marion County. We've seen some significant reductions in Marion County over the past few months. The most recent peak that we experienced was right around the beginning of March of this year, where we had around 618 to about 620 individuals who were unrepresented. As of this morning, we're down to 187. And so, that's an area that we've seen a lot of progress being made. We're also excited that upcoming, beginning in October, we've been able to design a new early resolution docket in partnership with the prosecutor in the courts in Marion County in our Trial Division, where we hope to have around 20 cases per week processed through that docket. We know that we don't always resolve 100% of the cases that we place on the docket, but even if we achieve a substantial share of those cases, we could get the number of unrepresented folks in Marion County down into just double digits, which would be pretty substantial.

Similarly in Coos County, we continue to make progress there, although progress is a little bit slow at times. The numbers are much smaller. We're at around 60 out-of-custody individuals right now who are on the list. We've been performing monthly early resolution dockets as well with the trial team down in Coos County. In fact, the next one, we're leaving later this week, and we have 18 cases that are scheduled on that docket. So, that could reduce the number of unrepresented folks almost – at least out of custody – by around a third in Coos County.

The story is a little bit different when we look at some of our other counties across the state, whether we think about Douglas County or we have Multnomah County here where the variation is a little bit more up and down, as we've seen throughout this crisis. But the long and the short of it is each of those counties, especially when we look at those out-of-custody cases, we do see an overall downward trend from recent peaks. And so, we do have some hope there. But certainly, the note on Multnomah and Washington County is that the numbers, the sheer numbers of folks who are unrepresented is still pretty large. And so, we have a lot of work to do in those areas. Next slide, please, Mara.

As we've been presenting throughout the past few months, we have our THIP program overview. As a reminder, we stopped taking THIP cases at the beginning of this biennium; however, cases that had been taken before the end of this past biennium, we're still paying out on it. So, we are still providing these

updates to monitor the spending that we have in that program as we move into this relatively new biennium. Next slide, please. The biggest concern that we've had since the ending of THIP was the potential for continuing to keep up with our Betschart case assignments. I know there was a lot of concern that we might be looking at a cliff when we move from THIP to the non-THIP period as the biennium turned over. And talking with our folks internally, while we've had some additional difficulty in finding folks who are willing to take those hourly cases, I believe the phrase that was provided to me was that it's become more difficult but not unmanageable at this time. Our case assignment coordinators continue to work very, very hard, manning the phone lines, pounding the pavement, trying to find folks who can take these cases. And so far, that's remained at a manageable level. We've also tried to retain a little bit of capacity within our Trial Division so that we can pivot those folks over to take Betschart cases if those are needed, if we're just unable to find an attorney at that time. Next slide, please.

And we do have just a very basic breakdown of our Oregon Trial Division cases focused on previously unrepresented individuals. We continue to take a substantial number of cases, especially in Jackson and Marion County. Our Multnomah office split between Multnomah and Washington counties is also taking a large number of cases. We are planning, just maybe building off of some of the public comment that we heard earlier, at our meeting next month to provide a more detailed presentation on how the Trial Division calculates workload, the relationship between the workload as we try to track it internally in MAC, to really talk about the work that our folks do. And so, that's something that you can preview or be ready for next month when we meet in person. But that is my unrepresented update. Unless you folks have any questions for me, then I'll let you get to your next agenda item.

Chair Jennifer Nash: Are there any questions? Doesn't look like it. Oh, sorry, Commissioner Harris.

Rob Harris: Sorry, I did have a question, backing up. What do you attribute Marion County's improvement to? Are there any tools or factors? Did filings go up or down? But they seem to have had significant improvement in unrepresented caseloads over the last several months.

Ken Sanchagrin: That's a great question, Commissioner Harris. I think that in Marion County, what we're really seeing is that confluence of the entire Marion County ecosystem beginning to work together in a better way than it had in the past. It's also, as we've had the full build out of our Trial Division, the number of cases that they're taking. So, when I say the ecosystem is working well, I think that we are getting closer to having that right amount of capacity within the county to actually have a handle on the cases we're taking. And then I think as far as clearing the backload, the reinitiation of some of the early resolution docket

efforts is what's really going to be able to hopefully usher us out of crisis in the county. So, I think it's really just beginning to finally match what we need with what we have.

Rob Harris: So, did your providers add spots and add attorneys or did their individual MACs just increase?

Ken Sanchagrin: If I recall, the individual MAC has been looking better in Marion County. I see that also Adrian is on. I'm not sure, Adrian, if you have any more detail on just the last few months in Marion County. That's something I'd have to get back to on, Commissioner Harris, to see what extent that is more attributable to some of the Trial Division work versus improved workload within Marion County.

Adrian Manriquez: Yeah, I don't have an answer right now, but that's definitely data we can get to you.

Ken Sanchagrin: So, we'll pull that up and we'll circulate that to you and the other commissioners.

Chair Jennifer Nash: I remember hearing some months ago now, of course, from the director of Marion County Public Defender that they were having a large turnover problem for a while and that she thought that that was going to stabilize and had stabilized and that it would be good to see if the numbers are bearing that out. Because obviously if that happened, that would have a really significant impact on the caseload. Commissioner Mandiberg?

Susan Mandiberg: Do you have any insight on what has caused the various parts of the ecosystem in Marion County to start working together better?

Ken Sanchagrin: That's another good question, Commissioner Mandiberg, Vice Chair Mandiberg. I'm not necessarily sure if it's working in harmony together so much as it's right sizing the amount of capacity that we need, again, with what we actually have and can provide. I'd like to believe that we work well together, but it's not necessarily partnerships between the different public defense entities. I think that we have been able to repair some relationships and develop some better partnerships with the other players in the system in Marion County, which is also contributing to some improvements there within the courts and the prosecutor's office. So, there has been some progress there, but I can't really point to making progress with the other providers in the county necessarily.

Susan Mandiberg: So, when you talk about the ecosystem, maybe I misunderstood. When you talk about the ecosystem, you're talking about the public defense providers. You're not talking about the courts, prosecutors, sheriff's department, and public defense providers all working together better.

Ken Sanchagrin: That's correct, yeah. So, when I talk about the ecosystem, it's beginning to have the right size of an ecosystem put together. And at least when I say we're all working together, I think we're all rowing in the same direction, trying to make progress within the county. We may not be rowing in the same boat, but at least we're trying to row in the same direction.

Susan Mandiberg: "All" just refers to defense attorneys.

Ken Sanchagrin: That's correct, yeah.

Susan Mandiberg: Yeah. So, there's no change in the non-defense attorney parts of the system working together better with each other or with defense attorneys.

Ken Sanchagrin: Oh, no, I apologize. I'd say the opposite at least with the Trial Division so that we have had some renewed partnerships with the district attorney. We've been working very closely with the courts and the district attorney as we've begun working to set up those dockets. And so, perhaps extending a poor metaphor of boat rowing, instead of having three boats that are just defense attorneys, it does feel at the moment that we have five boats, including the courts and the DAs, and we are rowing more in unison as we go across the proverbial...

[Laughter]

Ken Sanchagrin: I'm going to stop with that metaphor if I can.

Susan Mandiberg: Can you provide any insights into what has allowed the courts and the district attorney and maybe the sheriff's department to work more cooperatively with the defense bar so that all of the boats are rowing together [Laughter] and not just the defense boats? What I'm looking for is ways that we can encourage or support similar positive changes in other counties.

Ken Sanchagrin: I do believe that there's been a little bit of a different tone from within the agency since I arrived. It's a little bit harder for me to offer opinions on exactly how conversations went before my arrival, but I think that the tone has been a little bit different. I do think that there have been some preexisting relationships that I've been able to lean on a little bit more directly as we've come in. Certainly doing outreach, as the governor had asked me to in her initial appointment letter, to those different partners and being available to those partners. Perhaps it's even just down to having a reset within the agency has been very beneficial. And so, I've found that whether it's our district attorney partners or our court partners, everybody's been very willing to meet with me and the staff and to try to find ways forward. And so, that's my very long-winded way of saying that I think that we've had some progress since my

appointment, though I'm certainly not trying to take any real credit for it myself. I think it's just been a willingness on the part of everybody to have conversations.

Susan Mandiberg: I think you can take credit for a lot of it, but are there plans to try this same new approach in other crisis counties?

Ken Sanchagrin: We've had some initial discussions with some partners in Multnomah County about trying to not even necessarily revive, but to kind of recharge some of the efforts that we've had up there, again, using our Trial Division. I have plans to reach out to our partners in Washington County. I apologize to them that we've not had a sit-down yet beyond maybe talking with the courts. And so, yes, there are certainly some of those efforts that are underway that we plan to try to port over to others. I think it also corresponds really well with the legislature provided us with a position that we could shift over internally. Again, within the Trial Division, that position is supposed to focus primarily, if not exclusively on early resolution dockets and early resolution cases. And so, as we continue to have more person power who can undertake those efforts, then I think we can continue to offer to take more and more cases under those programs. And hopefully as they prove successful, it'll be like a ball rolling down a hill and continue to gain its own momentum.

Susan Mandiberg: Great, thanks very much.

Ken Sanchagrin: Yes. Thank you, Vice Chair.

Philippe Knab: Sorry, I just wanted to follow up on some of the questions that were asked already. But first, I do want to say, I think it's a really important factor is making sure that the district attorneys and the law enforcement partners are seeing this unrepresented litigant crisis as a criminal justice system crisis and not just a public defense crisis and have an active part in solving it as well. I don't think we're going to solve it just by having more public defenders. But my question is, what I heard you saying in Marion County was that there were more resources available. And my question is, have there been more resources allocated to Marion County other than the Trial Division's addition? Or is it just that there is an increase in case handling capacity through the public defense resources that were already there?

Ken Sanchagrin: Thank you for your question, Commissioner Knab. That's very similar to the question that Commissioner Harris was asking and that's what Adrian and I will provide some data to the commission just to follow up so that we can be precise in what amounts and in what types. But yes, we'll follow up with that for you. Thank you.

Philippe Knab: But so I guess let me just ask, have there been any other investments? Are there new investments in Marion County right now? Like have there been historically, over the last however months or years, additional investments? And if you don't know that right now, that's not a problem too.

Ken Sanchagrin: Right, that's what I'll follow up with you on. I can say in the past month or couple months, there's not been. We've had all of our contracts kind of frozen as we've gone into the new negotiation phase, but that doesn't speak to. I'd be looking more towards right around the time or right before the time of my arrival as far as investments being able to be made and paying off it, to whatever extent those were made. So, that's where I need to look back and make sure that I have the data so we can provide you all with the clarity that we'd need on that capacity kind of right-sizing. But I mean, the Trial Division becoming fully staffed and fully onboarded, that has played a significant role as well. But we'll look for the outside, the other pieces of the puzzle there.

Chair Jennifer Nash: All right, thank you. Are there other questions? Okay, we will next move on to the budget presentation, Mr. Amador. And I'm also going to have to step away for about two minutes. My other job, my day job is calling for just a moment. I need to go talk with my assistant. So, I will be right back. But in the meantime, Mr. Amador, thank you.

Ralph Amador: Good morning, Chair Nash, Vice Chair Mandiberg, members of the commission. For the record, my name is Ralph Amador. I'm the financial officer for the Public Defense Commission. I have for you today a budget presentation, which is similar to the ones that we have had over the last year or so, but there's a couple things that are different. What this is, is this is our biennium-ending presentation. And as you may remember, we were facing some pretty dire straits a couple months ago, but the good news is that we are going to be balancing the budget and not having any issues going forward as we close out this biennium through the rest of this year. Next slide, Mara.

First, we have the criminal or the Adult Trial Division. This particular slide focuses on the contracts, and it also has folded into it the Adult Trial Division, which is all in the same bucket for this particular biennium. It's sectioned out in the next biennium, but for here it is, we're showing \$445,000 left in this bucket. One thing that you need to be concerned with or not concerned with, is need to know, is that we started the biennium in this area with \$267 million, and we ended it with \$277 million. That was a difference or an increase of about \$10 million over the course of the biennium, including Trial Division and other investments that were made. Next slide, Mara.

Juvenile Division. Again, we are ending the biennium with \$93,000 left in the account, which a huge swing of events that happened over the last few months.

We started the Juvenile Division with \$54 million and we're ending it with \$51 million. So, this particular account went down about \$3.6 million. And again, it was due to savings and moving investments over into other parts of the budget to cover different holes. Next slide, Mara. Parent Child Representation division...Parent Child Representation Program. Again, we're ending it on a positive note with \$42,000 left in the budget. We started this particular budget with \$60.6 million and we're ending it with \$55 million. So, again, moving money over to different parts of the agency to cover expenses. Next slide, Mara.

Now we move from the contract services over to the vendor services. Preauthorized Expense, we are ending with \$2 remaining in this budget. And this has been a wild ride on this one, but we got it to \$2. We started this particular one with \$54.8 million, which means we've increased this budget over the biennium roughly around \$12 million to cover things. Court Mandated Expense. Another one that has been on a crazy ride for us. We are ending this with \$901,000. Important to note that all but 40 of these dollars, 40 of these dollars is part of limitation because this is a total funds budget look, that's empty limitation of, it's money that wasn't received in the application contribution program. So, really there's about, we took this down to about \$40 when you take that money out. This budget started at \$71.5 million. So, we've increased it about \$21 million over the course of the biennium. Next slide, Mara. Oh, here we go. Never mind.

Appellate Division. Appellate Division, we're leaving \$17,000. What am I talking about? \$17,000 is left in this bucket. We started this one with \$24.4 million and we added about 1.5 million to this particular division. Compliance, Audit, and Performance, known as our CAP Division, we're leaving \$103,000 in this one. And we started CAP at \$6.4 million. So, we moved about \$81,000 to different parts of the budget in this one. Administrative Services and Executive divisions have been combined throughout the entire area just because it creates an ease of management for presentation purposes. But in those particular budgets, which contains the FCMS budget from the last biennium, we're leaving \$143,000 in this particular area. And we started these two budgets at \$28.7 million, so this went down about \$4.1 million over the course of the biennium. Lastly, Special Programs, Contracts, and Distributions, and we're leaving about \$127,000 in this particular area. This budget started at \$9.8 million, and we increased it about \$2.9 million with investments and stuff. Part of that was with the law school contracts and everything else that was added in the short session and throughout.

And then our last slide is our overall budget. Our ending budget is \$614 million. We spent about \$612 million, leaving \$1.8 million in the thing. Again, remember 900 of that is empty limitation. So, we're leaving about a million dollars on the table. We increased, we started our OPDS budget with \$578.8 million. And so,

we grew about \$35.9 million over the course of the biennium. So, that is the Final Budget Presentation for the '23-'25 Biennium. This was landed by help with a lot of people, particularly the accountants that I have are wonderful. They're phenomenal accountants. They worked really hard. We were meeting daily on this to try and make sure everything landed. The legislature was gracious enough to allow us to rebalance some stuff. And then the partnership and cooperation from the commission actually helped land this budget for us. So, thank you.

Chair Jennifer Nash: Are there any questions or comments? I mean, I'm super impressed. I know there was a lot of white knuckling it for a while there. We were pretty concerned about whether or not we were going to go over the budget and there were at least two and maybe three rebalances. And I would say a big thank you for keeping such a close eye on it and for keeping us apprised throughout this entire biennium about the status of the budget. Your monthly updates have been very helpful to us. And it really helped, especially the forecast into the future to determine, "Okay, we need to pay attention to this. In a few months, we might need to rebalance. We might need to seek emergency board funding." That's all been very helpful. And especially given this agency's not recent but long history in the past of having difficulties with managing and monitoring the budget, I want to just say, I really, really appreciate all of your efforts and your team's efforts to make sure that we have been on top of it and that we've been able to do the job that we need to do for budget oversight because of your hard work, and I very much appreciate it. Thank you and good job.

Ralph Amador: Thank you, Chair Nash. I appreciate it.

Chair Jennifer Nash: No reds. And that's what we want, no reds. So, that's perfect, thank you. All right, moving on next to a briefing regarding – [Laughter] and now we move on to the fun news – travel expense scenarios. And just for context, this is back in front of the commission for further, or I shouldn't say back, but continues to be in front of the commission for discussion at our request about the difficulty that the agency, the commission finds itself in because the legislature greatly reduced the travel expense budget in the Preauthorized Expense and Court Mandated Expense categories. And I asked, well, the commission generally asked for some different scenarios about what would happen if we did various different things while we have this issue under consideration, and when we have our next work group session, this will be one of the items that we will be addressing. So, Mr. Amador, take it away.

Ralph Amador: Thank you, Chair Nash, Vice Chair Mandiberg, members of the commission. Again, my name is Ralph Amador, the financial officer for the Public Defense Commission. Again, we have for you a briefing on the travel time scenarios as a result of reductions that were created in the budget. So, next slide, Mara. So,

first, I wanted to start out with an explanation of terms so that when I slip up and say an acronym or something, folks will understand what I'm talking about. When we refer to the LAB, at this point, we're talking about the legislatively adopted budget for '25-'27, which not to be confused with the LAB that happens later, which is the legislatively approved budget. But we're not going to worry about the approved, we're talking about the adopted budget, which was adopted July 1 of 2025. When we talk about a reduction, we're talking about funding that was removed by legislative action. Travel time is time spent traveling or en route to a destination where other work cannot reasonably be performed.

Court Mandated Expense are hourly attorney costs, interpreter and other case costs that are determined to be routine. Preauthorized Expense – investigator, mitigator, expert, psychological, case manager, etc., including case-related expenses that are determined to be non-routine. FY24, our expenditures paid through July 1, 2023, through June 30th of 2024. FY25 – and FY, fiscal year, I'm sorry, probably should explain that out too, fiscal year – our expenditures paid through July 1, 2024, through June 30th, 2025. Next slide, Mara. 15.82%. What this means, this is the overall rate our caseload is expected to grow based on the current forecast for the 2025-2027 biennium. This percentage amount is added to the '23-'25 expenditure totals to demonstrate a projected cost increase for '25-'27 biennium. \$50 per hour proposal. It's a proposal that providers will be paid at \$50 per hour for travel time regardless of their hourly service rate. Half of rate per hour proposal, proposal that hourly providers will be paid at half of their hourly service rate for travel time. And the final budget notes, OPDC will continue to fund other travel expenses with no change to current policy for mileage, lodging, airfare, car rental, and meals. So, those are not included in what we're talking about here. Those are separate line items that we will continue to fund. Next slide, Mara.

Okay, if no action is taken, here's some scenarios. This occurred. In the budget, legislatively adopted budget reductions, which means funding was not included in our budget, the reduction to Court Mandated Expense was \$1.8 million. The reduction to Preauthorized Expense was \$3.5 million. Means that was not included in our budget. So, it wasn't they gave it to us and took it back. It just wasn't included. Time-Travel expenses are expected to continue. So, what this is saying is that for '23-'25, we had these expenditures for Court Mandated Expense of 2.2 and Preauthorized Expense of 3.6 just for Time-Travel, and that's just paid hourly time stuff. So, those are expected to continue, our caseloads haven't gone down. So, if we do nothing, then we can expect at least that to happen, which goes down to our next thing, Time-Travel expenditures projected amount. If we continue to pay them, we've increased those expenditures by 15.82% to account for the increased caseload forecast amounts, so that in the Court Mandated Expense, what that means is that 2.2 million goes to 2.6 million

for Court Mandated Expense, and that 3.6 million goes to \$4.2 million in Preauthorized Expense.

Chair Jennifer Nash: I have a question.

Ralph Amador: Go ahead, yep. I was going to say I'm going to wait a second for questions.

Chair Jennifer Nash: So, just to put a really fine point on this, travel expenditures that fall under Court Mandated Expenses generally are for attorney travel time, correct?

Ralph Amador: In Court Mandated Expense, yes. And maybe some interpreters, but when you'll see the next slides, there's some categories that were either where they got coded or whatever happened. So, I didn't really dial into the particulars of each particular one, but that's where it came out to. But generally, we will be for the next biennium, it will be attorney, there'll be some interpreter stuff that may be in there just for travel time. Yes.

Chair Jennifer Nash: And then Preauthorized Expense travel is related to expert witnesses and investigators.

Ralph Amador: Chair Nash, yes. Plus case managers, plus mitigators and psychologists. Psychologists is a big one, yes.

Chair Jennifer Nash: Okay. So, for investigators, case managers, interpreters, their hourly rate at this point is relatively close to \$50 an hour already. So, we're really talking about for Preauthorized Expenses, the big money part of this is expert witness travel time, correct?

Ralph Amador: Of Preauthorized Expense, yes, ma'am.

Chair Jennifer Nash: Okay. And then the last question I have is if the number of cases that are taken by hourly lawyers decreases because they're absorbed either by the Trial Division or contractors, would it follow that the travel expenses in Court Mandated Expense category would also decrease naturally?

Ralph Amador: Theoretically, yes, ma'am.

Chair Jennifer Nash: Okay. Those are the questions I have. Commissioner Knab.

Philippe Knab: So, my question is the 15.82% increase, where is that number coming from?

Ralph Amador: Commissioner Knab, thank you for the question. The 15.8% increase comes from the calculation that was done with the April 2025 forecast that was issued

by the Office of Economic Forecast at DAS. So, that's the number we used to increase our budget figures for the '23-'25 budget period.

Philippe Knab: And so, that 15.82% is an increase that's being applied across the board, is that right?

Ralph Amador: Yes, sir. If you're saying, when you're saying across the board, do you mean in this particular area?

Philippe Knab: Yeah.

Ralph Amador: Yes. In Preauthorized Expense, yes.

Chair Jennifer Nash: It's a capacity increase, not a rate increase. So, it's we anticipate we're going to have to increase the caseload by, well, we did, by 15.8%.

Philippe Knab: And I guess my last question is more of a general question but related to this. So, is it expected that we'll have either the same or more capacity across the board in case-handling capacity in the upcoming budget?

Chair Jennifer Nash: Well, I mean, we need 15.82% more lawyers to cover the caseload. That's right.

Philippe Knab: But we'll have the budget to do that.

Chair Jennifer Nash: We were funded for that, yes.

Philippe Knab: All right. All right.

Chair Jennifer Nash: Whether or not...

Philippe Knab: Whether or not the lawyers are there is a different...

Chair Jennifer Nash: We were funded for it, yes.

Philippe Knab: All right.

Chair Jennifer Nash: Yeah. Okay, Commissioner Harris.

Rob Harris: Thanks. Thanks for this, Ralph. A couple of questions. I'm assuming that most of these travel time are for hourly people, including THIP, correct? For the lawyers, at least lawyers.

Ralph Amador: Yes, it is. Yes, sir.

Rob Harris: Okay, so assuming that we contract more cases and we have fewer THIP and hourlies, we may not see that 15% increase. Is that accurate?

Ralph Amador: I'm going to agree with that. Yes, sir. I'm not going to hang my hat on that, but...

Rob Harris: Yeah, [Laughter] a lot of assumptions there. Also, in our travel time guidelines, is there a de minimis amount? Like if you're within 10 miles of the courthouse, you don't get it? Or is it truly portal-to-portal type billing that lawyers are doing?

Ralph Amador: So, I think in our policy, it has to be if you leave the county or if you go outside of 15 miles. I will get a better explanation for you on that.

Rob Harris: Okay.

Ralph Amador: I think that is correct, that if you don't leave the county of your area, then you don't get to have travel time.

Rob Harris: Okay, all right. Those are my questions for now. Thank you.

Chair Jennifer Nash: I think it's that you don't get travel time between, excuse me, your office and the courthouse, if it's in the same county. But I mean, I would think that like if your office was in Portland and you were going to Coos Bay, you [Distortion 00:53:40] person, you'd get paid for that.

Ralph Amador: That's correct, Commissioner Nash. I mean, Chair Nash, sorry.

Rob Harris: How would that affect the counties, the large counties? I'm assuming most lawyers probably have their offices in the county seat, but maybe not all, or maybe they cover multiple counties. They've got to be given some consideration. I just assume there's some rules for if it's a de minimis amount going from your office to your courthouse, that that is not billable. That would be normal in private practice.

Ralph Amador: That is correct, sir.

Rob Harris: I'll leave it at that as just a comment, okay?

Ralph Amador: You are correct on that one, sir. Except if it's a different county. But you do get mileage.

Chair Jennifer Nash: Okay. Any other questions? Okay, next slide. Thank you. [Laughter]

Ralph Amador: So, what we have here is the Court Mandated Expenses for fiscal year 24. And basically, this is just to demonstrate what we paid out for Court Mandated

Expense, travel time, that's the attorneys, interpreters, investigation, mitigation, and other experts in Court Mandated Expense. And that was for this fiscal year. Next slide, Mara. This is the same slide, but only applicable to fiscal year 25 Court Mandated Expense, and you'll see there was a significant up-jump in the second year of the biennium. Next slide, Mara. And what I've done here is we've combined both of the fiscal years to show the biennial total of there's about 15,000 hours billed, \$2.2 million spent. And what we've done, so in the chart, I said, if we paid \$50 per hour, then that 2.2 becomes \$768,000. If we paid half of the rate-per-hour proposal, that, of course, 2.2 goes to 1.1. That's at the '23-'25 numbers. These two proposals, if you increase it 15.82% to account for the increased case load that's expected to happen, the \$50 proposal goes to \$889,000, and the half-of-the-rate proposal goes to \$1.3 million for Court Mandated Expense. Next slide, Mara. Again, this is a similar slide for Preauthorized Expense for fiscal year 24.

Chair Jennifer Nash: This makes me have a question. Do we have a breakdown in Court Mandated Expenses between enhanced rate and non-enhanced rate?

Ralph Amador: I think it was all captured here. It should have been in the other one, but, I mean, it's just how it was put together and charged.

Chair Jennifer Nash: Okay.

Ralph Amador: So, this may have to change to the other one, but we do have specific money assigned for THIP money in the Court Mandated Expense area.

Chair Jennifer Nash: And then, is that THIP money, I know we got a POP for rolling up THIP, so the Court Mandated Expense and the Preauthorized Expenses related to THIP, are you carving those out when you talk about having to modify the travel expenses? Can you talk a little bit about that bucket and whether or not it would be affected by if these numbers are also included in the THIP?

Ralph Amador: So, we did get a number of dollars for attorneys in Court Mandated Expense for THIP. We have carved that out because that number was a solid number that we can't inflate that or do anything with that. That's the money we got. Same thing with Preauthorized Expenditures. When we do start doing the expenditures, again, that bucket will be hit by enhanced attorney rate travel, if we agree to pay for it, then we will fix those costs there. Right now in the budget because travel was removed, it only pays for attorney expenses at this point, and then Court Mandated Expense pays for the rest of everything else. But if you're just talking specific THIP, it would be pointed to that bucket, which I think was \$11 million.

Chair Jennifer Nash: So, are these last three slides that you've given us inclusive of THIP? I guess what I'm really trying to say is if you carve the THIP expenses out, is that part of the assumptions that you're making here, that those expenses related to any THIP case are not included in your projections about what will happen with the travel budget?

Ralph Amador: We would carve those out and fix them to the THIP money.

Chair Jennifer Nash: Okay.

Ralph Amador: But again, the budget didn't include travel, so we wouldn't necessarily pay those expenditures.

Chair Jennifer Nash: Wait, what do you...

[Crosstalk 00:59:09]

Ralph Amador: They will be annotated as enhanced attorney and enhanced investigator.

Chair Jennifer Nash: Oh, you're just saying you're not going to call them travel, they're just going to go in a different category, the enhanced. Okay, I understand, I understand. Okay, Commissioner Knab.

Philippe Knab: So, is the attorney travel within this graphic, that's only for hourly attorneys, right?

Ralph Amador: Yes.

Philippe Knab: And is the psychiatric and other expert and investigation, is that for the entire consortium attorneys too?

Ralph Amador: That's for everybody, sir.

Philippe Knab: All right. That was my only clarifying question, I just wanted to understand that.

Chair Jennifer Nash: Thank you. All right, go ahead, Mr. Amador.

Ralph Amador: Next slide, Mara. Again, this is the same slide, but for fiscal year 25, which is the second year of the biennium. And again, there's a little bit of a jump. Go ahead, Mara, please.

Philippe Knab: I'm going to add just one comment. To me, a million dollars in expert and psychiatrist travel seems like a lot. And I've practiced public defense, but not in Oregon, but that seems like a large budget for travel, exclusively for travel. Are

there any oversights or any sort of like financial checks or balances on these types of both requests, approvals, and things of that nature?

Ralph Amador: Commissioner Knab, thank you for the question. The checks and balances that we have in place now are when they're actually requested. So, travel has to be requested and approved through our Preauthorized Expense process. So, when they ask for it, they'll say, "I have this, I need this much travel." And so, that travel will be approved as it's paid. The difference between the two fiscal years is that I believe in '24, it was half the rate, and in '25, it became the full rate of compensation.

Philippe Knab: So, I mean, I guess for the request, like, and I'm sorry, I know that this is like very low level for folks who have been on the commission and practiced here, but who's approving the travel for experts and psychiatric witnesses?

Ralph Amador: So, thank you, sir. When an attorney requesting to cite the psychiatric service, it depends on where the case is. They will go through, and they will request service for somebody, first, it's in that area, then in Oregon. And then if you can't find the expert in Oregon, we'll have to go nationwide or somewhere else. That goes through our Preauthorized Expense program. We have analysts that go through and there's certain things that they consider and look at. They check the mileage and everything else and the time via Google Maps or something else to make sure that it's reasonable. And then they'll approve it there. If it goes over \$15,000, we have it jumped up to a manager that will say, "Is this reasonable or not?"

If it's something that's way out of whack, then we'll actually send it to one of the attorneys at our Trial Support and Development area to say, "Hey, is this reasonable to fund? Is this something to look at?" And then we'll go back. If it is unreasonable, we'll just turn it down and ask them to reapply or resubmit something that's more reasonable. So, we do try to look at them as best we can, as quickly as we can. We do have some rapid document type things for Aid and Assist and stuff to where in Aid and Assist, they can go do the service. But if they have to travel, then they'll have to do a long form to actually get approval for expenses for travel if authorized. Did I answer your question, sir?

Philippe Knab: That did, that was a great answer, thank you. And my last question on that same, do you have those, like the standards or the approvals? I didn't see them in the contract specifically. So, I'm just wondering, is there somewhere online that those are accessible so that I or the public might be able to go and see what is being assessed by your analysts when they're approving or not approving? Or is it based in legislation somewhere that I haven't seen?

Ralph Amador: Sir, we have everything posted on our website, our official website, in our Preauthorized Expense areas. We have our policies and procedures in there. We have desk manuals at each of our areas for the people that work there. We have our rate sheet, our hourly rate sheet that we have on there that we're changing the name. And we're actually in the process of reposting that in several areas on the web that will make it more prominent so people can see what the hourly rates are and stuff are, things that just point specifically to where policies are going. So, we're trying to make it even more accessible to people when they just click into the website.

Philippe Knab: Great. Well, thank you. I really appreciate the thorough answer.

Ralph Amador: You're very welcome. Thank you for your question. Okay, next slide, Mara. So, here we have the same thing that I had for Court Mandated Expense. We're adding fiscal years 24 and 25 together. We get 38,000 hours, \$3.6 million in expense. If you change, if you convert the '23-'25 numbers to a \$50-per-hour proposal, it goes to 1.9. If you convert the half-of-the-rate-per-hour proposal, it goes to 1.8. And if you project those expenditures for '25-'27, the 1.9 becomes 2.2 for \$50 per hour, and 1.8 becomes 2.1 for the half-of-rate-per-hour proposal. I apologize for speaking that one way too quickly. So, I'll give folks a minute to absorb that. Okay, Mara, please. Here's a summary. If no action is taken and travel time is paid at the provider's current full-service rate, the 2025 projected expenditures, adding 15.82% as an increase for projected caseload increases, Court Mandated Expense would be projected \$2.6 million. Preauthorized Expense would be projected \$4.2 million. Again, not budgeted for this. So, this is what the expenses would be.

If travel time is paid at \$50 per hour for all providers and you add the 15.82% increase, Court Mandated Expense can expect to see \$889,000 and Preauthorized Expense would be \$2.2 million. And then if travel time is paid at half, then Court Mandated Expense is 1.3, Preauthorized Expense is 2.1. And things to remember is that expenditures in Court Mandated Expense will result in less money available to pay for hourly cases. And right now, PAE, we're projecting that it's going to have about \$2.4 million obligated funds at this point. So, that's, if you approve something or move forward to do something, any of these things, new proposals, you would be able to fund it barely, but you would leave pretty much nothing in the Preauthorized Expense area. We like that at the end of the biennium, but not at the beginning of the biennium. And again, I would reiterate that Court Mandated Expense areas, any money you spend from there, it just takes money away from our ability to pay for hourly cases. And I think I will leave this there because this is the last slide I'll have in the presentation, if there's any questions.

Chair Jennifer Nash: Does anyone have any questions? Just to be clear, we're not making decisions today. This is just information for us to make decisions on a later date. I think I saw Commissioner Harris's hand go up first.

Rob Harris: Thanks. One thing that this analysis is missing, a couple of things, actually, but one thing it's primarily missing is how will this increase the unrepresented crisis? And that, we're talking dollars here. I get that. You're looking at budgets. That's your job, Ralph, but we don't know. I think we can guess pretty fairly, there's more lawyers who will not be taking out-of-county cases, and the THIP program was specifically incentivized doing that, as did the hourly program. This is how we move resources around from county to county. And if all of a sudden, you're, excuse me, you're reducing their already reduced hourly rate, which used to be THIP, now it's 150 or whatever, down to either 50 or 50% or zero, you're going to lose capacity. And if our mission, our goal, our charge by the legislature is to fix this crisis, we're going in the wrong direction here. There's no business case for this, other than a budget case, but there's no business case for this.

So, the other thing is if you look at just practicality, I'm pretty sure that no public employee gets half their hourly rate while they're working from 8:00 to 5:00. I am pretty sure that private lawyers charge hourly rates for most of their travel time, not all of it. I did this, but if I had to go to Clackamas County, I would charge for it. If I had to go to Tillamook, I would charge for it. And that was at a higher hourly rate than an hourly rate that's already just already pretty minimal for a lawyer to keep a shop open. So, I could do it at \$300 an hour. I could charge 150 for driving, but I don't know if you could charge \$50 for driving. I wouldn't do it. And so, you're going to have capacity problems here.

Thirdly, on this case, you know what? If we have to rebalance, we have to rebalance. We have to get these lawyers out there. This also will incentivize, thirdly, I guess I was going to say, we could contract for this caseload. I don't think it's going to be a 15.8% increase. Well, it shouldn't be a 15.8% increase in hourly providers. For one thing, as Chair Nash pointed out, some of these lawyers at full rates were at \$200 an hour. They're not going to be any more. They're going to be at less than that. So, that'll be some savings. If we increase contracting, we won't have as many hourly. If we are able to make efforts in reducing the unrepresented crisis, we won't have to have lawyers driving from county to county. So, I would agree.

I would float the idea that we pay at 75% of rate, and here's why. Here's why I picked 75%. In private practice, if I'm in my office for eight hours, like if I billed six hours, that would be pretty good. So, that's about 75%, right? So, if someone's just driving in their car for two hours, them getting paid 75% of two hours at their regular hourly rate, that's not bad. Even though it's a low hourly

rate, at least it's related to what they could bill if they were in those offices for two hours. So, it sort of, it compensates them for their billable time when they're driving. I'm not saying that's the perfect solution, [Laughter] but I'm trying to figure out a business case for how we make sure the lawyers continue to take these cases. And if I were a lawyer in private practice already doing this, just to like do fill-in work for myself, or even if it was my major part, I probably wouldn't take out-of-county cases. So, I am almost sure this is going to exacerbate our unrepresented a crisis, and I don't think that's the direction we should go in. So, I would either say, keep it the same, or maybe some modest decrease for actual travel time. But at the low hourly, we've already reduced the THIP down to a low. I would probably just say, keep it at the same. If we need to rebalance, we'll rebalance. Let's cross our fingers and hope that the actual hourly bills that come in are less than your 15.8% projected so we will have money to rebalance at the end of the day.

Chair Jennifer Nash: Thank you. Commissioner Knab.

Philippe Knab: Yeah, and this is actually very similar to what Commissioner Harris was saying to a certain extent. I mean, it seems like this is a very kind of one-size-fits-all solution for a problem that may have a better, more nuanced solution. I know administratively, that may be much more difficult to execute, but would there be a potential to find that cost savings in tightening rules around expert witness travel in specific cases, and providing for reductions in travel time, non-attorney travel time. And actually looking at each bucket or each individual line item individually and saying, "Hey, this can be reduced, this can be reduced. These folks can appear remotely most of the time." And working with courts, working with attorneys to have a preference for remote appearances where possible. And so, I'm just wondering whether this proposal can both acknowledge what Commissioner Harris is saying in that we certainly need to incentivize attorneys to take cases out of county and to be able to compensate for them. And then also realize the budget expenses and do that by both tightening the standards for experts and expert travel and then looking at each individual item within this and changing it accordingly to its market capacity without just pushing that onto 50% across the board.

Chair Jennifer Nash: Thank you. Commissioner Mandiberg.

Susan Mandiberg: I just wanted to clarify something. When we're talking about travel expenses, we're not only talking about travel to appear in court, right? We may be talking about travel to interview a client. Especially when we're talking about expert witnesses, we're talking about a psychiatrist, for example, having to go meet with and assess a client. Similarly with investigators, we're talking about travel to do investigation. And I am assuming, again, talking about the de minimis issue, if we're talking about a geographically enormous county, we're talking

about Eastern Oregon, for example, there are going to be significant travel expenses, maybe not for appearing in court if the courthouse and the office are down the street from each other, but if a lawyer or an investigator has to go elsewhere in a very large geographic county to do that work, we're talking about travel expenses there as well. Am I wrong in thinking this way?

Chair Jennifer Nash: That's right.

Susan Mandiberg: Yeah, so I think when we're talking about what we can do to afford all of this, we have to think beyond just getting to the courthouse and we have to think beyond the Willamette Valley, [Laughter] really. Although there are fewer cases out in Central and Eastern Oregon, we have to be able to provide what's needed to do those cases. That's all.

Chair Jennifer Nash: Thank you. I have a couple of comments, but before I make my comments, I need to declare a potential conflict of interest. So, I am a person who is in private practice. During the time that I've been on the commission, I ceased taking any court-appointed cases. Even though I could have done that, I just didn't feel comfortable doing that. My law firm continued to handle THIP cases one at a time throughout the time I've been on the commission except for the last several months. My law partner's THIP case concluded, and he has not taken another appointment under THIP and does not plan to. However, it is possible that once I leave the commission, I could take court-appointed cases, my law partner could take court-appointed cases, and we could be affected by the travel policies. That being said, my comments are informed by that experience. And that is that our hourly rate is \$400 an hour and we are right in line with what an average hourly rate would be. It's more in the Multnomah, Washington County area for private bar providers. It's probably a little less in places like Southern Oregon or rural Oregon, but we're right in line. So, the THIP hourly rate for murder cases was \$200 an hour, which is 50%.

After my law partner quit taking his THIP cases, I was joking around with him, but it's not a joke, it's very serious about how his revenue for the work that he was doing went way up because, of course, for that time he wasn't spending on his THIP case, which, by the way, was east of the mountains, went up by double, right? So, for every hour he was sitting in a car driving, which he did about every two weeks or so to go visit his client, maybe once a month, but certainly at least once a month, three and a half hours one way to drive to see his client in the jail. And it's an all-day endeavor because by the time you drive there and back, you want to spend as much time as possible. Plus there's investigative time, court time, all those other times, but you know, that's a whole day. That's a whole day that he could have been billing \$400 an hour, even at six hours, which is probably about right, Mr. Harris. But instead, he did that at a reduced rate.

And then when you put on top of that, okay, well, now you're not going to be able to do that. You're only going to bill at \$50 an hour. That becomes a lot more... Then he's actually, when there were no more THIP rate, his comments to me was, "I'm not taking another one of those cases. That's ridiculous." Then when you talk about dropping down travel time to \$50 an hour, we're going to lose providers. And I think we are going to have a natural attrition as we talked about because we're really focusing on having these cases out of hourly because it's the most expensive way to provide services and instead have contractors or the Trial Division taking as many of these cases as possible. But that's only for lawyers. We still have PAE expenses for expert witnesses and investigators, regardless of whether those are done by consortia lawyers or private bar lawyers. And so, those expenses you would assume would become the same unless they're absorbed by nonprofits, which is unlikely, or the Trial Division.

And so, as Commissioner Harris says, this is not a good business model. And I wonder if – this is a decision the commission will have to make at some point – and I wonder if it doesn't make sense to let this sit for a little while and see what happens. Pay close attention to the budget, see what it looks like for travel expenses, see whether or not at some point it's obvious we're going to run out of money and understanding that the longer you wait, the more drastic the cuts will have to be. You can make it more gradual if you cut up front, but also are we cutting off our nose to spite our face if we do that? Are we going to lose a large number of providers?

I do agree with Commissioner Knab that it makes sense to scrutinize expert travel. I mean, A, do we need to be hiring an expert who lives in North Carolina as opposed to one who lives in Washington? Things like that. I mean, the justifications for hiring expert witnesses that may need to travel long distances, I think we could put some more scrutiny on that. And also, is any part of their work, can it be done through remote means or other means? Lawyers are, want to zealously represent their clients and need to, but they also, I think all public defense lawyers are really aware of the budgetary constraints and will do what they can to help with expert witnesses to make sure that those expenses are managed appropriately.

So, those are my general thoughts. I know we're going to talk about this more in a work group setting in a couple of weeks, but I just, that's what I'm thinking. So, any other questions or comments before we... And thank you, Mr. Amador. Sorry about that. Thank you very much for all of your help. Are there other questions or comments about the travel expense situation before we move on to the next budget item? I'm sorry, not budget item. The next agenda item. Yeah. Poor Ralph was like, "What budget item?" The next agenda item. Okay. All

right, with that, we'll turn it over to Vice Chair Mandiberg to talk about the 2025 Commission KPM survey. You're muted, Susan.

Susan Mandiberg: Thank you. We don't have any slides for this. It's a really brief report. Eight of the 10 commissioners responded to the survey. The responses are anonymous. So, I don't know who the two are who did not respond. And the numeric responses were pretty similar to last year. Many found some of the questions not relevant to our work or comprehensible. At least one question people didn't understand, at least many didn't. We don't make up the questions. The questions come to us as a required group of things to ask the commissioners every year. And the answers are then, at least the numeric answers are then reported back to a variety of state commissions or boards. There were also the ability to give a written response, which is something that we added. The written responses are not forwarded outside of our commission.

My plan is to have the Governance Subcommittee take a look at both the numeric and the written responses in our meeting in September, and we'll put together a report similar to the report we put together last year. I don't think that anybody will find anything very surprising. One of the things that does come out of both the numeric and the written responses is that there are some basic commission tasks that we have not been paying attention to. And it's, I think, rational that we haven't because our attention has been focused on squeakier wheels, such as the unrepresented persons crisis, such as writing the reports that the legislature required us to write throughout 2024, such as dealing with everything we've had to do to move from the judicial branch to the executive branch, which we are still dealing with, and such as dealing with a change in the executive director of the agency that happened extremely abruptly without any advance notice. And I would say that Director Sanchagrin has been doing an amazing job, but he's been playing catch up and really devoting his time to things that absolutely have to get done and have to get done on a schedule.

But we need to focus on some of this work that we have put aside if we possibly can. One of the things that we need to focus on is putting together a list of articulated performance expectations for the executive director. We need to put together a way of evaluating whether the executive director is meeting those expectations. We need to completely redo the bylaws for the commission, especially now that we're in the executive branch. And I would say that one of the reasons, or another reason that I haven't mentioned, as these things haven't been done expeditiously, is that we have not been able to have the advice of counsel for the last little while. And since the legislature has not funded a general counsel position for OPDC, we will be having to use the Department of Justice. We are working through some of the issues involved in using the Department of Justice, at which there are at least several. And so, the

Governance Subcommittee will take a look at all of this in September and be able, I think, to give a more detailed report at the September commission meeting. That's all I have for today. So, if anybody has any questions, I'll try to answer them.

Chair Jennifer Nash: Doesn't look like it? Thank you very much.

Susan Mandiberg: You're welcome.

Chair Jennifer Nash: I really appreciate it. All right. We're going to have a briefing on the Criminal Attorney Performance Standards that were included in our agenda packet. And this is also, we're going to have kind of a heavy agenda for our work group. We'll be able to more fully discuss these in our agenda work group. I know when I reviewed them, I have a bunch of questions and kind of edits and things like that, and this is really a time for the briefing and the time for fully discussing those questions or those edits. Well, we could have that, a more robust discussion in the work group. If we have time during the briefing or at the end of the briefing, we can start that process, but I just want to flag that this isn't it. We're not going to 30 minutes and then we're going to vote on it next time. We're going to fully discuss these in the work group meeting. All right. With that, Mr. Arntt, take it away.

Steve Arntt: Thank you, Chair Nash. Good morning. Next slide, please. Thank you. So, we came up with these, the new attorney performance standards, in conjunction with what was required by statute. And as I understand it, we have a work group coming up on the 8th of September. And we posted these on August 1st. We've been receiving some comments back from the community. These standards were adopted, were not adopted, but drafted in conjunction with providers providing input on a drafting committee. Next slide, please. I'm sorry. I said the 8th of September. I believe it's actually the 4th of September we're meeting. I would appreciate it if anybody has any edits or comments that they want to have, please submit those to me in advance. Just go ahead and email me, then I can have those ready and prepared so that I can make the best use of our time on the 4th.

Give you a little bit of history on this. Back in 2014, the Oregon State Bar published both Criminal and Delinquency Performance Standards. We're going to be publishing some standards that are related to some other types of cases that OPDC has oversight on. So, in addition to the Delinquency and Criminal Standards, you're going to be seeing a series of standards coming through. My goal is to send these out, have about a month or two in between when you receive them and when you have to vote on them. That gives us plenty of time to do any back and forth we need to do with drafting. These standards were drafted heavily from the OSB Standards that were published back in 2014.

Obviously, there are going to be some changes. Next slide, please. The reason we're doing this is really to improve our performance throughout the state, ensure accountability and transparency, ensure the clients are receiving the representation that we would like to see them receive. There are also the standards by which when we get a complaint about an attorney, these are going to be the standards by which we rate whether or not the attorney's met their obligations. Next slide, please. I think it's important to realize that there's going to be sort of a black letter standard of this is the minimum that we would expect you to do as an attorney. There's going to be some aspirational goals in there. I think it's important that people know what they have to do, kind of establishing that floor and kind of establishing, hey, what are the best practices?

And I would like to give a shout out to the provider community on these best practices. There was a lot of commentary. There was a lot of discussion on what people believed was best standards. And a lot of work went into drafting these. Next slide, please. As I mentioned, we're going to use these to flag for issues for potential inquiries, but we're also going to use these to identify best practices. Hey, we see that some folks are providing performance at this level. They're adopting these certain standards. This is their customary practice. And we'll be able to identify what are the best practices and share those across the provider community. Next slide, please. So, we distributed these for provider feedback back on August 1st. So, they've had them for about three weeks. We've gotten a little bit of feedback. We're going to close the comment period September 15th. That's going to give us enough time for us to take whatever comments we receive, incorporate them into whatever the final draft is going to look like, and then we'll bring those back to the commission in October for the October meeting in order to have them approved and adopted. Next slide, please.

So, we do have a number of standards upcoming. I don't plan on each of these being introduced individually. As you can see, if we did each one of these individually, it would take us a long time to get through all of them with a two-month kind of run up. So, some of these, for example, like some of the, for example, habeas and post-conviction, civil commitment, those might all come through as one package. And I think this'll go a little bit faster as we go. What I don't want to do is shorten the time that our provider community has to look at these and evaluate these standards. I wanted to make sure that we had roughly in that 45-to-60-day timeframe for people to go ahead and have notice and comment. Could we go ahead and hit the next slide, please? So, our recommendation is really that we do nothing during this meeting, but that we come back in October and adopt these subject to any edits that we make during that time. If there are any questions, I'd be happy to take questions at this time.

Chair Jennifer Nash: Commissioner Mandiberg.

Steve Arntt: Vice Chair.

Susan Mandiberg: So, we are meeting in a work group on the 6th?

Steve Arntt: On the 4th, ma'am.

Susan Mandiberg: 4th.

Steve Arntt: 4th, ma'am. Yes.

Susan Mandiberg: The comment period closes on the 19th, and then you want us to vote on it in October, but that means that we won't have any time other than the voting meeting to talk about the comments that you get from the provider community and whatever edits you make to what we see on the 4th.

Chair Jennifer Nash: We'll have one more meeting in October. A work group meeting.

Susan Mandiberg: Well, so your plan is to have this on the work group meeting in September and October.

Chair Jennifer Nash: Yeah, my thought was the September one would be, and we might not need it if we were able to have a full discussion today, but we don't have all the commissioners here, but hey, we have a question about this. We have a question about that. Agency makes the edits, providers provide their comment, and then bring it back to the commission meeting in September again for follow-up. And then, if necessary, that October work group, and then we'll vote on it in October. So, I think we're going to have plenty of time to fully discuss it and make sure it's the way we want it.

Susan Mandiberg: That makes more sense. I also have, I want to raise the same concern that I raised [Laughter] the last time we talked about this.

Steve Arntt: Okay.

Susan Mandiberg: And especially in the part – let's see, I took notes, and I have them someplace. I have to apologize. My home office is a complete mess because we're getting ready to sell our house. The part of the standards where you're listing all of the – oh, here it is – where you're listing all of the things that lawyers should do. And I'm sorry, I just don't have the exact section in front of me.

Steve Arntt: Mm-hmm.

Susan Mandiberg: There are a lot of very, very, very specific things right toward the beginning. They have a lot of very, very, very specific things under best practices. Today,

you talked about separating the floor of what's acceptable from what's aspirational. And it wasn't clear to me in that long list of best practices, which things were minimal, which things were the floor, and which things were aspirational. And if OPDC is going to use that list to respond or to evaluate when a complaint is made against a lawyer, I think it's important for both lawyers and the community at large to know which things are floor and which things are aspirational. And I also think that's important because if for some reason a lawyer doesn't do something on the aspirational list or any number of things on the aspirational list, then it becomes, I would imagine, a question of professional judgment, whether those things were really necessary to do. That then translates into increased exposure for a lawyer for an incompetent counsel challenge on a post-conviction or for a tort suit claiming damages. That concerns me.

Steve Arntt: I thought it was clear from there's a standard and then we define what are best practices. And we looked at the best practices as kind of aspirational. This is what we would like to see under an ideal situation. We know there are times that we can't do best practices in every single instance. There will be times where best practices may not be met, but that doesn't mean that someone is inadequate or ineffective.

Susan Mandiberg: Well, I don't think that's very clear in the way it's set out. And I know that we as lawyers, those of us who are, and if you've ever handled a criminal case, you know that clients and clients' families don't always distinguish between aspiration and bottom line. And that sometimes...

Steve Arntt: True enough.

Susan Mandiberg: ...and that sometimes, post-conviction cases are brought and sometimes malpractice cases are brought based on failure to do something that it made sense not to do, but that that was not understood by either the client or the client's family. And dealing with those kinds of lawsuits is draining and time-consuming, and if we're setting people up to have to deal with more of those kinds of lawsuits, I think it's another situation where we're going to have people saying, "I don't need this in my life. I'm not going to take these cases." So, I think we need to be extremely clear, not just hinting at it, about what's the bottom line and what things are normally within a lawyer's professional expertise. And just I think we're doing ourselves a disservice along the same lines as we were talking about with the budget to set people up for saying they don't want to take these cases.

Steve Arntt: We could certainly look at reinforcing the preamble language and maybe adding some additional language that would make that clear.

Susan Mandiberg: Instead of saying best practices, if all of those things on that list are really aspirational, it might – and not just in the preamble, people don't read preambles – it might be best to say "The following practices are within the sound professional discretion of the attorney based on individual case factors," or something along those lines, maybe not those exact words. But when you say best practices, a lay reaction is going to be, "Well, my lawyer better do every single one of those things. I want the best I can," right?

Steve Arntt: [Laughter]

Susan Mandiberg: Okay, that's my input.

Steve Arntt: Thank you, ma'am.

Chair Jennifer Nash: Commissioner Lininger.

Tom Lininger: First, Mr. Arntt, I wanted to thank you for your hard work on this project, and it feels like I sometimes am nitpicky when you present, but that's just a coincidence that I love going over lists of rules like this.

Steve Arntt: [Laughter]

Tom Lininger: There's no lack of appreciation for your good work. So, I had two ideas. One, Commissioner Mandiberg or Vice Chair Mandiberg covered pretty well, but I just wanted to suggest really there are two sources of authority for lawyer conduct, and one is the Oregon Rules of Professional Conduct. And then now we have this 2014 document from the Oregon State Bar about criminal defense practice and other subfields of practice. And I wonder if a better approach might simply be to say, "Here are the OPDC standards. The ones that are mandatory are the ones that come from the Oregon Rules of Professional Conduct. The ones that are aspirational..." – or best practices, or whatever term we want to rely on, to clarify that they're not the basis for discipline – "...come from the 2014 document." But I think that clear bifurcation will address some of the concerns that Vice Chair Mandiberg brought up.

Also, one risk of creating these protocols is that you sort of stultify the development of innovative lawyering. But the second comment I want to make is different from what Vice Chair Mandiberg brought up. And that is, I really think we're going to need to discuss rule 1.3 or standard 1.3. And I know we're not going to do a deep dive today, but the second sentence of that standard, which is "obligations to defense counsel regarding workload," says, "If it later appears that the lawyer is unable to offer quality representation in the case, the lawyer must move to withdraw." I'm all for that approach in general and wish we lived in a world where the governor and the legislature had the same

insistence on quality representation. But I'm also acutely aware over the last year and a half of my service on the OPDC that we've kind of been directed to be maybe a little less exacting in quality standards, which is very frustrating to me, but it's sort of the reality of the direction we're getting.

And so, it turns out that the Model Rules for Professional Conduct and also the Oregon counterpart in rule 1.16 has a very precise list of bases for withdrawal. Some are mandatory, some are permissive. And it is striking to me that we have now elevated to what appears to be a mandatory rule, this kind of general notion that if one can't offer quality representation, one should move to withdraw. Noting that disjunction, I still like this language better. Just to be clear, [Distortion 01:44:17] better, but it does seem a little inconsistent with the direction we're getting from on high. And if I were to try to support 1.3 in its current form in your draft, which I kind of like, I would say, much like Carl Macpherson said in the public comments, I really think that there's been some interpretive opinions from the Oregon State Bar, from the ABA – ABA in 2006, Oregon State Bar in 2007 – that say quality and being overextended is a ground for withdrawal, but technically it's not in the Oregon Rules of Professional Conduct.

So, I just feel that this is going to be an area we'll need to pay more attention to. I don't know if refining the language will help, but I do think potentially we are [Laughter] inviting withdrawal suits when everyone on the commission acknowledges that we're not presently funding OPDC to the extent necessary for what we consider to be quality representation. So, I'd see a lot of potential peril in what we have here and look forward to talking with you more about it on, what, the 4th or 6th or whatever that date is.

Steve Arntt: I'm looking forward to it.

Chair Jennifer Nash: Thank you. Commissioner Knab.

Philippe Knab: I just, I wanted to echo what Vice Chair Mandiberg said, but from a slightly different perspective, I do think that especially in the areas around the pretrial motions, there is a kind of liability concern. I think my concern of reading the comprehensiveness of these standards is from a implementation and oversight perspective. I think that there is a lot of aspirational here that makes it hard to actually enforce the baseline standards.

Steve Arntt: Okay.

Philippe Knab: And so, in the same way that the distinction is sometimes less clear, I think that if you're going to have enforceable standards, there really do need to be baselines. And potentially having it, separating the two out, might provide some

guidance for lawyers, but I don't think you're going to get that through a document like this. And I think that from an enforcement perspective, I think you're better off having a less aspiration and more bottom line.

Steve Arntt: Are you suggesting perhaps two documents, one that is "Here are the baseline standards." Here's a second document where we describe aspirational goals?

Philippe Knab: I mean, I don't know that you need that for the statutory requirements, but I think from... And this is, I mean, this is what I do in my day job. So, it is I think that if you're trying to cover everything that someone can or should do, you're not going to be able to enforce it all. So, you need some very clear guidelines on what are mandatory and what are discretionary, and there's always going to be a lot of discretion. I mean, having supervised attorneys for many years, I can't tell you how many times something looked like it wasn't by the book, but there's information that that attorney has that we don't have that's the reason they do it. So, I really think that limiting, bringing this down from aspirational standards to baseline standards would help the Office of Public Defense enforce these and make them meaningful to people.

Steve Arntt: Okay.

Chair Jennifer Nash: Thank you. That last point's a really good point. I'll tell you, when I was reviewing the materials, or after I reviewed the materials, I was telling my law partner about them. And I said this is a great training manual. The way I read this is if you're a new lawyer. It's not very useful for people who've been in practice for a really long time, right? But if you're a new lawyer and you want to know how to be a public defender, these are the things that I need to be doing, this is a great document. This lays it out step-by-step, all the things you should be thinking about, all of the considerations, all the areas where you ought to know something, a lot of things about them, the things that you should be doing in each of your cases, monitoring what your expert witnesses are doing, monitoring what your investigators are doing, etc. But in terms of enforceability, it's going to be really difficult to do that. And I'm not saying we shouldn't have this kind of a document because I think we should, but if we are really setting standards that CAP is going to monitor, this isn't the document to do that. This document's fantastic, but I don't think, as Commissioner Knab says, it lines up with our ability to enforce it. So, we have to think about big picture, what's our goal? And then work backward from there.

Steve Arntt: Mm-hmm.

Chair Jennifer Nash: So, just some sort of things to think about big picture wise I think make sense, and we can have further discussions about that. I have a pet, not peeve, but a thing that I've been on for many years that I want to talk about specifically in

this document, and that is a whole piece about evaluating the competency of your client. I have been irritated for most of my career with people like courts and state hospitals regarding competency issues because they always want to evaluate a client based on, well, are they competent to stand trial? And that's not the law, and that's not the standard. Decisional capacity at every critical stage of the proceedings is what's important and not just whether or not a person can stand trial.

And the case law is clear about this too because the person has to be able to be informed and make decisions about all of the important things that they alone are required to do. And that is to decide whether or not to have a trial at all, whether or not to waive jury or have their case tried with a judge, whether or not to accept a plea, which goes to the first one, whether or not to appeal their case and whether or not to testify. Those are decisions that lie with the client, and the client has to be able to make an informed decision and have the capacity, the decisional capacity. And decisional capacity is really hard, especially for new lawyers, to grasp what that looks like because it can be affected not just by things related to mental illness.

It can be physical ailments. It can be disabilities. It can be someone who has aphasia who can't speak properly. It can be someone with severe ADHD who cannot sit in a courtroom and pay attention. It can be a juvenile who lacks the maturity to be able to understand the proceedings because they're so – this is a true story from mine – they're so preoccupied with Star Wars that the only thing, even though they're 17 years old, the only thing they can think about is all of the Star Wars. No mental health diagnosis, but they've got terrible ADHD, right? [Distortion 01:52:24] All of the ways that the people in the courtroom remind them of characters in Star Wars. That person can't make decisions about what's going on in their trial. And so, I think we need to do a better, more nuanced job about describing competency. [Laughter] That's my soapbox.

Steve Arntt:

Okay.

Chair Jennifer Nash:

I read that, I was like, "This looks like the state hospital stuff that they put out about competency." And it's not good enough. And it also helps us, right? It helps us think about when our clients, maybe we need to get an evaluation if we think about competency differently other than just are they hearing voices, that sort of thing. So, that's kind of my thing.

And then the other thing is to Commissioner Lininger's point, we have the Oregon State Bar Standards, which I realize needs some updating, but not a ton. And we've got the Oregon Rules of Professional Conduct. And if we have things that say absolutely, and I have an absolute, an absolute is, and it's not in the standards, you got to give your client the discovery or they have to sign a

written document saying they don't want it. That's an absolute in my book. And we all know there are lots of lawyers that don't do that and there's nothing about giving your client discovery in these standards. And so, I think we need to think about this, as Commissioner Knab says, from the absolutes, what are the things that absolutely people need to do? And then everything else is aspirational and maybe goes in a separate document. And we need to be able to measure those things. Whatever they are, we need to be able to monitor and measure them. And this is fantastic work. So, I don't want to, I mean, it's not...

Steve Arntt: [Laughter]

Chair Jennifer Nash: ...throw your whole thing out, that's not at all what anyone is saying. I think we're really trying to look at this through the long lens and to make the agency's life easier in monitoring and to really provide a really good roadmap for providers, so they know what it is that we want them to do. Any other questions or comments?

Steve Arntt: These are very helpful and useful comments.

Chair Jennifer Nash: All right. Any other questions or comments before we take a break? And it looks like we're right on target for time, so that's good. We're a little early. Actually, we're a little late. I'm sorry about that. I just noticed I'm five minutes late. So, I try to be on time. So, let's take a break. It's 10:55. The break is supposed to go to 11:00, 10 minutes. So, let's take 10 minutes though, and we'll come back at 11:05. So, thank you.

[No dialogue]

Chair Jennifer Nash: I'm dropping things in my office. All right. It is 11:05. We can get started. The next item on the agenda is a discussion regarding feedback on draft contracts led by me, but I don't really think it's... My understanding of this was we were going to receive information about the feedback on draft contracts. I don't have any information to provide regarding feedback on draft contracts. So, maybe there was a... Maybe I misunderstood or someone else did. Ken, can you help out?

Ken Sanchagrin: I apologize. I think this may have been an area where we didn't have complete alignment in kind of our prep where, yes, I mean, we've received feedback throughout the process, we've been publishing answers to feedback, but we did not have like a specific presentation or batch of feedback for you all today. My understanding or impression had been that a lot of feedback has been coming to you all as commissioners, or that you might have your own concerns you'd like to express as we go through the process. And so, I think this is an example of maybe making some assumptions where we didn't align.

Chair Jennifer Nash: That's all right. I do have a question though based on public comment, which you might be able to answer. I'm gleaned from the public comment that was given that perhaps there is a lack of clarity around whether or not we are specifically funding training and supervision positions.

Ken Sanchagrin: Mm-hmm.

Chair Jennifer Nash: Are we doing that? I mean, I think our expectation is we would be doing that. And has that information been provided to providers so that they know that those positions are going to be funded, or is there some issue with that?

Ken Sanchagrin: I think I have the same assumption as you, and I'll admit the training and supervision as a specific line item, the first I heard about that was today. But I know that we still have Steve on the line who has been air traffic controlling comments from every direction. And so, I'm going to see if I can put him on the spot and see if he has heard that comment yet and if we have an answer to it because if it's kind of first impression today, then we'll have to circle back on it. But yeah, Steve, what have you been hearing on the training and supervision specifically?

Steve Arntt: So, on supervision, the provision does not allow, for example, an Attorney 4 to supervise an Attorney 4. And supervision has been scaled back to more junior attorneys, as opposed to, for example, an Attorney 5 being supervised. And I think the line on that was Attorney level 3 is where the supervision line ended.

Chair Jennifer Nash: So, in the past, and by past, I mean this biennium, we were specifically... Actually, it started in '22 at the E-board. I think it was the E-board. We were given money for the unrepresented problem, and we were told, "Come up with a plan for this money." And part of the plan that we came up with was that part of that money was used for retention bonuses, and then another part of the money was used for training and supervision, and also then that increased amount for investigator, in-house investigators. So, that's where the bulk of that money went to. And then that got rolled into the CSL for '23-'24, I'm sorry, '24-'25. Those positions were fully funded in the CSL. As a commissioner, my expectation would be that we would continue to fund those positions, and they would be part of '25-'27 as well. Because everyone needs to be supervised, not just lower-level lawyers. And so, we didn't distinguish between who was supervising. It was you have funding for a supervisor position at your nonprofit public defender agency. And so, are you saying that that's not happening?

Steve Arntt: That is not in the current contract.

Chair Jennifer Nash: Why not? And especially, and maybe you can't answer this on the spot obviously, but why not and why...

[Crosstalk 02:10:20]

Steve Arntt: My understanding is that there had become a situation where some providers were eligible for...all providers were eligible for supervision under the current policies, but only some were being offered supervision in the contracts. In order to make that square, the money has to come from somewhere. You have to reduce funding. You don't have an unlimited funding pool to fund an unlimited number of supervisors. If we have a level playing field for all, whether it's consortia or nonprofits, that money has to come from somewhere. There was no additional new funding for supervision.

Chair Jennifer Nash: Right, so to be very blunt, the supervision positions were nonprofit public defenders. That's where that money went. The commission made that decision. And then it was rolled up into the CSL.

Steve Arntt: The policy provides for providers. It does not say only public defenders.

Chair Jennifer Nash: True. I mean, that's true. In practice, it ended up being only public defenders. And I'm guessing probably not all of them as well. I don't know that, but I'm just guessing.

Steve Arntt: Right.

Chair Jennifer Nash: I guess my concern is, I mean, just with the long lens, we heard lots of testimony back when we made that decision about the benefit to that. And that, I mean, the work was being done anyway. It wasn't being compensated. Because there's supervision that has to happen no matter what, right? I mean, especially in the nonprofit. I mean, it's built into the structure. So, like the investigator piece, where they're subsidizing a certain portion of the investigator's salary, they were subsidizing for many years supervision funds. And so, those people are hired. They're in their positions. They're being paid. So, if we aren't funding that, then we're going to... And they're not exclusive supervisors. So, that's just a portion of their caseload, right? So, if we're not going to be funding those positions, I can imagine that we're going to lose capacity with providers because those people will not be able... If they don't have the funding, they're not going to be able to keep those lawyers potentially. So, I'm concerned about that. And kind of what Commissioner Harris said before about budget versus business practice. It doesn't really seem like it makes sense to strip that money away, especially if we...

Steve Arntt: I do believe there would be funding under, for example, MAC utilization for those positions. There's just not supervisor funding.

Chair Jennifer Nash: Go ahead, Ken.

Ken Sanchagrin: Excuse me, Chair. I was just going to suggest, let me and Steve and the team circle back. That way we're not speculating on the record. Just to make sure we have this clear and what we will endeavor to do is to provide written thoughts to you all as commissioners. We'll send that out. And then we can also put this up under the frequently asked questions, the clarification that we can provide to folks. Because I don't want to go down discursive tracks now just in case we have some relatively simple answers we can provide.

Chair Jennifer Nash: Perfect. Thank you for intervening. That's great. And I'm putting poor Steve on the spot and he's like, "I don't know here." So, yes, I appreciate that.

Ken Sanchagrin: We'll jump on this the moment the meeting's over.

Chair Jennifer Nash: That would be very helpful. Great. Okay. Other thoughts, questions about other feedback that commissioners are getting about contract? Commissioner Harris.

Rob Harris: Yeah, thanks. I've heard a couple of things. One is the 20-day reporting requirement, go from the 20th to the 15th to the 10th. This commission actually went through that about a year and a half ago. I think the agency wanted to draft contracts reducing that timeframe, and the commission decided not to. And that was a policy decision. I don't think that's been reversed. I don't think we've had that up for discussion, but it pops up in this contract again by whoever in the agency was responsible for that piece of it. I didn't hear a compelling reason why to shorten it. I heard some compelling reasons why to keep it the same. I would also point out that our CFM asked or however you say that, whatever order those letters are in order, is not online yet. Will be online, which will make this reporting easier. Maybe at that time it's meant to tighten it up. I think that I don't really see the reason for shortening it. I know you can tell me the data will be done that much earlier, but 10 days earlier versus bad data versus good data. I'd rather keep it as it is at this point. I don't think it's that critical. Unless you can point out, someone in the agency could point me out to a critical reason why this commission should reverse its prior decision.

The digital security insurance, I think we talked about that at a meeting. I've heard from several people that they've had real trouble finding that out. What's that availability, the cost of it? It's an additional cost that was not being compensated for. It could be substantial. It may even be difficult to get, and I know the director has had some discussion with a couple of us about that. So,

I'm hoping that that can be waived or excluded at this point until we know more about it.

Steve Arntt: I believe on the website, it's listed as optional.

Rob Harris: It is now?

Steve Arntt: We answered that question.

Rob Harris: Okay.

Steve Arntt: Yes, Mr. Harris.

Rob Harris: All right, that's good. Thanks. So, I will just tell them to go to the website and check that out then.

Ken Sanchagrin: And Mr. Harris, I'm willing to say on the record that, I mean, as the director who signs the contracts that that will be optional.

Rob Harris: Right, thank you.

Ken Sanchagrin: Yeah. It'll already be on the website for that one.

Rob Harris: Thank you, I appreciate that. And finally, just I guess a comment based on what Chair Nash said about this training issue and how all of a sudden, it seems to not be there anymore. Or maybe it needs to be investigated. I really want the commission and the agency who are drafting these contracts to be aligned and not have to revisit some issues that the commission has spoken on. I realize we're not in charge of the contract specifically, the drafting part of it. Eventually we do have to approve them, and I would hope that our directions are being followed or honored. Or if they're wrong, come back and explain to us why that we should revisit these things. So, I think that's really important going forward.

And finally, and I already raised this with Director Sanchagrin and a couple of people on this commission, but I really think that we do have a mismatch between providers and this contract in that we're trying to stuff everything in there that applies to every kind of provider type. And so, it gets somewhat confusing or maybe some people even think, why is it in there? And they get concerned why that is in there. And I do think we need to revisit the formatting in this contract and come up with a master contract and then separate addendum contracts that apply to the different provider types so we can sort this out. There are roles that, for instance, public defenders play that other providers don't, and they have certain expenses. There's rural people, rural providers might have extra expenses. And I think some of these do have to be

considered and it would be better instead of having one long contract with everything covered for everybody that we actually sort this out a little bit. It's not the time to do that. This period of time is too short. But I think that that's something that I would just sort of put a pin in for the director and his folks who are drafting this contract. Thanks.

Chair Jennifer Nash: Thank you. Commissioner Knab.

Philippe Knab: Thank you. So, I have had an opportunity to look through the contracts and I haven't received feedback from other providers, but just from looking over things myself, I think that what stood out to me is the hourly contracts and the lack of really any sort of guidelines on that. And I understand, but there seems like at least having some sort of standard case minimum. Like within my own practice, we have expected case times and then someone has to come and ask for more time if they go over a case time. And so, it seems to me like if you look at the general contract and the hourly contracts, that the hourly contracts, and I know that we're trying to incentivize people to take these contracts and we don't want to make them onerous and there's always going to be a balance, but it seems like the distinction between the general criminal attorney contract, and actually, I think that what Rob said is right, and I think we've seen that across the space and it may be a lack of internal capacity, but trying to do a one-size-fits-all document when you have people that are situated so separately, it may benefit from trying to treat each different cohort as a different cohort and not have a public defense contract that also goes to the different types of providers.

But from my perspective, it really does seem like you need some sort of time accountability in the hourly contract. It just seems overly susceptible to abuse if you can have a misdemeanor that has 100 hours. So, I would suggest putting something in, an expected standard that is kind of roughly in coalition with the max standards. I think more generally, and this is the way that we structure our comments, it's kind of a, instead of a MAC standard developing and this, again, this isn't for right now because these are this year's contracts but moving towards a workload standard rather than a MAC standard, I think seems like it would lead to better results across the board. But I know that where we are right now, that's not in the cards, but I do think that having some additional safeguards in the hourly contract seems like an important addition.

Chair Jennifer Nash: Thank you. I will say just a couple comments. I mean, the workload, I think the only people who have an issue with the workload standard is the legislature. And it isn't even a, "We think it's bad." It's a, "But we've been doing it this way. So, you have to tell us how you're going to convert." That's really been the... And it's a huge lift. So, it's work that this commission needs to do. It's work that I know is going on in the background. But I mean, I think it is fair to say that there is a consensus across all facets of the criminal justice system – the DAs,

the courts, providers, everyone – that we have to switch to a workload, even the legislature, that we have to switch to a workload standard because the MAC counting doesn't account. It hides the problem, and it doesn't account for when you close one case, then you can fill it with another. If you're on a MAC standard, it's like, "Sorry, I took my six cases. They're all closed. I'm just," I mean, this doesn't happen, "But I'm just going to sit here and do nothing now for the rest of the month." Whereas a workload, you close one, you open another. So, it's just how do we convert that and how do we get the data in the way that we need it to be able to show what that would look like and how to fund it. So 100%, I think we all agree, and that's a huge lift.

I will answer, I know the answer, Commissioner Harris, to the question about why the reporting dates are being changed. It's because when the reports are written and when we provide data to the legislature, it is very, very stale by the time it gets to the legislature. It's sometimes 60 days old, which is not helpful. And when FCMS comes online, the reporting requirement timeline is going to be significantly shorter. So, this is an iterative step. You can't go from, oh, 25 days to now you have 5 days or whatever, I'm making up that number. This is just an iterative step so that it's a little bit shorter, a little bit shorter, a little bit shorter, instead of just making a huge leap. And the large reason the commission didn't change the reporting requirements last time is we received frank feedback from the agency that they didn't even really have the staffing infrastructure to support or reduce reporting timelines. So, what was the point? And I think that that's not the case anymore. So, it is helpful to have that data sooner and it's very helpful to have the data sooner. So, that's why, and I can be obviously, the staff can, Director Sanchagrin can tell me about that.

And then I just wanted, before that, I just wanted to say two other things very briefly, just information for providers. I know that the digital security insurance or cybersecurity insurance isn't required anymore, but for anyone who wants to know because it's important probably for us to have that generally, is I was able to get a quote from our liability provider, which is Liberty Mutual for our business policy, and it was \$205 a year to add that on. And it's pretty robust coverage. So, for anyone who's looking for it, Liberty Mutual can do that and it's a relatively reasonable cost. And then also just a point of note, we no longer under Senate Bill 337 approve contracts. The commission does not approve contracts. We do oversight, other kinds of oversight about contracts, but we don't do the same kind of contract approval that we used to do before, just FYI. All right, Director Sanchagrin.

Ken Sanchagrin:

Yeah, just briefly, I just wanted to make, no disagreement with any of your thoughts, especially on the data reporting, but just wanted to say that I've also had some really good meetings and we've talked in real detail with providers about the challenges for data reporting, especially on the kind of aspirational

time schedule we would have during the second half of the contract. And so, that's something I'm working on with staff and whether that's to convert maybe the second move from 15 days to 10 to something that's more aspirational, that's something that we're talking about internally. The feedback I was getting from some of the groups I was talking to was 15 days was difficult but manageable. What I'm interested in is making sure, I think, what Commissioner Harris was saying as well, is that we have that sweet spot between good data and timely data. I don't want to rush folks because garbage in, garbage out doesn't really help us. I also know that, just like you mentioned, the legislature is a big motivator there. And so, also trying to explore internally whether there are other administrative data sources that can help supplement that to keep us moving a little bit faster.

And so, I just want to make sure that this is broadcast out to folks that we're working on this. And from my perspective as a data person, I want to try to find that sweet spot. I don't want to just pick days out of the blue. And I also understand too that sometimes, like the 10-day turnaround for certain month-end close around holidays and other time periods, it could give contractors even less time to respond. And so, maybe there's even a standard set, but then we have to realistically look at the calendar and make sure that those standards align with something that's realistic as far as business days. So, that's just to say that that's something that we're working on, and I wanted to make sure that folks know that.

Chair Jennifer Nash: Thank you. Commissioner Knab.

Philippe Knab: Yeah, I'm sorry. I was just looking back through my notes and there was one other point I wanted to quickly make that I neglected to make. I would suggest adding some sort of notice about vacancy. I mean, I think that there are bigger issues around vacancy, like making sure that vacancies are being baked into the appropriate FTE allotment for the cases needed, and that's kind of a larger budget projection issue. But I think that as an agency, you really can't just ignore the idea that people go on leave, that there's all kinds of new protected leaves, and that vacancy rates, they happen. And so, it's got to be both baked into our projections of what happens and then also within the contract, something I think that is really important to kind of understand performance is how are those vacancies affecting each consortium, each public defender office, what's that level at? And so, I would recommend putting some sort of vacancy notice requirement so that you're getting an idea of what the actual staffing is versus what the FTE allotment is. Just a thought.

Chair Jennifer Nash: Very helpful, thank you. Other thoughts, other questions? Okay, thank you. And we'll talk, we'll have a further, also on the workload or also in the workgroup agenda. That's a packed agenda, but I just want to make sure that I publicly

notice anything that we might talk about. So, we may not have to talk about more contract provider feedback information, but if we do, it'll be noticed, and we'll have the opportunity to do that in our work group session as well. Okay, moving on next to a little bit early, but I see Ms. Taylor is on the legislative update.

Lisa Taylor:

Yeah. Hello, Lisa Taylor, government relations manager. My update is very brief this month. I really just wanted to go over some of the legislative dates. We did receive the calendar dates for when reports will be due to LFO ahead of the legislative meetings coming up. So, I'm just going to share a quick slide, and then if there are any questions, I'll be happy to answer them. So, these are the legislative dates that we have coming up. We've got a revenue forecast coming up on August 27th, and that will be shortly followed by the special session on the 29th. This special session is about the transportation package. We won't have any involvement in it. All indications that I've heard are it's very focused on just the transportation package. After that, at the end of September, early October is September Legislative Days. We do not have any reports due during September Legislative Days, and we don't have any requests that we foresee making during September Legislative Days.

Then November 17th through 19th are the November Legislative Days. We will be providing a preview of the Comprehensive Public Defense Report 2 to judiciary. That report's actually due December 1st, and the judiciary chair has agreed for us to turn that in on December 5th, since that aligns with our December commission meeting. So, in November, we'll be bringing you a briefing about this report, and then that report will be approved on the December 5th meeting. November 19th, we have another revenue forecast, and then January 13th through 15th are January Legislative Days. These are the Legislative Days that prep everything for the short session in February. So, we have our interim status report due during those Legislative Days. We'll also be bringing forward any short session budget requests because they want to approve those all during the December Legislative Days in preparation to get them in the omnibus bill for the short session.

That short session's 35 days, so they want to get everything kind of ready to go. As of right now, we don't have any official budget requests. Any budget requests would, of course, be in alignment with the governor's office, and they'd have to go through the DAS process. The governor did put out a signing letter talking about our Trial Division and assignment coordinators and how she's supportive of those. So, that would potentially be a direction we would go forward with a budget request, but again, all budget requests will have to be done in close working relationships with DAS and the governor's office. Then, of course, short session begins February 2nd, and during short session, we have our KPM Update Report, and the Capacity Report are due. And that is our

legislative dates that are coming up. And again, you probably won't be hearing too much from me until October/November timelines when we start bringing forward drafts of some of these reports.

Chair Jennifer Nash: Thank you, sorry. Thank you, Ms. Taylor. Are we going to be in the short session requesting changes to the KPMs?

Lisa Taylor: Sort of. Officially requesting updates to KPMs, there's a whole process and you put it in through an online forum, which is due at the end of April. So, the report that's due during short session is more of like a status check-in report that they're requesting from us. This isn't part of an official KPM process normally, but they've requested this of us. So, we'll be bringing forward our, kind of, it's going to be sort of like, "These are what we anticipate submitting for our new KPMs. This is the process we've gone through. What's your feedback?" And then any legislative feedback, we'll have a good two months, if not more, to incorporate some of that legislative feedback, maybe bring it back to the commission to discuss with the commission and make edits then. Again, before we have to officially submit it through the process.

Chair Jennifer Nash: I mean, the plan is, and I think the commission wants the plan to be to change the KPMs. So, this is part of that process.

Lisa Taylor: Yes, and we're being directed by the legislature as well to update those KPMs, which is in alignment with, I think, what the commission's interested in doing. So, yes, the goal is to come out of the short session with a clear direction of what those KPMs are going to be so we can submit them at the end of April so that they can be adopted in the long session and then they'll officially be going into the next biennium.

Chair Jennifer Nash: Okay. And then for the November Legislative Days, even though the report isn't due until December, if we're going to be presenting information to the legislature in November, we should probably present at least an outline of the information to the commission prior to the presentation to the legislature.

Lisa Taylor: Yes, Chair Nash, I think that's accurate. And again, I've built out this timeline. I think we'll likely need some sort of work group. If we reconvene the Legislative Subcommittee, that might be a role for them because otherwise, the timing, I believe the November meeting is actually during those Legislative Days.

[Crosstalk 02:35:40]

Lisa Taylor: Yeah, and the October meeting would likely be far too early for us to have a report done.

Chair Jennifer Nash: Yes, the meeting is the 19th. And so, flagging, we may have to actually adjust that meeting date. Director Sanchagrin.

Ken Sanchagrin: And this'll be my first rodeo for Legislative Days. So, if we want to do a different approach, then we can as far as with OPDC. And so, what my hope would be and what I would have looked for at my agency before, especially since what we were specifically asked to provide by the legislature is a preview that that was what they requested is that whether we have a preliminary report that we acknowledge that there are some pieces that may change, or we acknowledge that we're still going through the finalization and final approval of it. That's what I would be looking to get either from our October meeting, or we could talk about it during the work group as information, as opposed to like a true approval. But as long as we're in alignment with what that preliminary information is going to be, that's what I would be looking at as a director so that I know that I'm not stepping outside of my lane when I appear in front of the legislature because then we can take their feedback too and incorporate that in the finalization of the report. The main thing is I just don't want us to try to sprint to finalize before, then offer the preview. Then if we get some feedback, we'd have to go through a whole 'nother process. So, yes, we'll look at aligning those dates to try to figure out a way to make sure that we have that appropriate forum for either a true approval or, like I said, a discussion so we can make sure we're aligned as I go forward.

Chair Jennifer Nash: That sounds great. And we always have the option of using, as long as I can get a quorum, we have the option of using any of the work groups as we can probably notice them as an action item and do an approval if we need to do a formal approval during any of those as well, without having to schedule another meeting because we don't want to do that. But depending on, I just want to flag this and we may not know until close in time, if the director or other staff is unavailable for the commission meeting on the 18th of November because they're going to be at the legislature, or members of the commission need to be there, then we will have to move the meeting date, but we'll know that, well, we'll try to know that as quickly as possible. Sometimes it's not possible to know early. [Laughter]

Ken Sanchagrin: It may be a good idea to look at alternative dates just as precaution because you're right, a lot of times we don't know exactly when. I mean, we may know a day, but we may not know a time as far as when we might have to be down at the Capitol.

Chair Jennifer Nash: Yeah, sounds good. And then just for the commission and for just providers, this is not going to be a surprise to anybody, but just to flag it, I mean, the revenue forecast I anticipate it's going to be dismal, and we may be in a situation where even though the cuts so far have been targeted to specific buckets, I wouldn't

be surprised at all if there's going to be some sort of budgetary reshuffling among lots of agencies. We are in kind of a unique situation because we have a mandated obligation and a mandated caseload, but that doesn't necessarily mean that we aren't going to be subject to cuts and maybe drastic cuts, depending on what the revenue forecast looks like and what the federal executive branch cuts look like. So, that's not surprising to anybody, but just putting that out there now in anticipation of discussions that we may have to have between now and the end of the year and into next year. Okay, any other questions, any questions or other comments? All right, doesn't look like it. So, we'll switch to your update, Director Sanchagrin. You're muted.

Ken Sanchagrin: Well, you think after five years, I'd be able to handle that. [Laughter] Thank you. And Mara, you can go to the next slide. Some of the items that we've been talking about that I'd planned to update on, we've already touched on, so I may not touch on every single one of the bullets. But first, I'll just start with upcoming dates. And reminders, we have both our Governance Subcommittee meeting and a commission work group coming up on the 4th that's been mentioned a few times, but then also a reminder that our in-person commission meeting in September here in Salem will be on the 17th, and we hope to have as many of you join us as possible.

We'll be down at the Fish and Wildlife Building, which is a beautiful setup for a meeting of this type. We're looking at the meeting going over lunch, and so we'll be providing lunch as well. Although I've been told that we'll have to take a little bit of a break for lunch to step out because we can't eat in the fancy meeting room, and so that's just a little side note, but we will be sending out information on ordering lunch for commissioners who are able to attend when we arrive there. Another side note, just as something to look forward to in our September meeting, it was mentioned in our last commission meeting, and staff has been doing work behind the scenes to provide additional work group time at our commission meetings at the beginning of meetings.

And so, also for folks who are used to tuning in for our meetings, you'll see a slightly different agenda coming out for September where the first hour of our meeting, it will be noticed, it will be included in the agenda, but it will be more of a discussion and feedback time for staff to provide information to the commission. And what we envision filling up that space, though this won't be in every single meeting, I just mean over different types of meetings is sometimes there may be, especially as we get new commissioners in on the commission, essentially some one-on-one discussions.

I think that'd be a great place for us maybe to bring in, like I mentioned earlier, a discussion of the trial team and how we calculate workload, informational things like that. I can envision us bringing in discussion of how we do our

accounts payable or how we handle PAEs, the types of things that I think would actually be really good. Some of the questions that Mr. Knab, for example, has brought up during this meeting, as we talk about travel. There's a lot of those details that folks in the commission for a long time understand, but for those who are out in the community or for new, even myself, I learn a lot when we have these discussions, and so we can put in some information there. We can also talk and have substantive discussions similar to what we do on our Thursday night meetings, giving us more time for more consideration.

One of the critiques I've heard from the commission is all too often you all are asked to make decisions based on just one or two opportunities to have consideration over a lot of these proposals, and so we want to provide more time for that. And so, that'll be kind of a grab bag of many different opportunities, but that's something we'll be starting in September as well. And so, look forward to that. It may be a little clunky the very first time, but we'll do our best to make sure that that turns into something that's really useful for the commission. So, that's upcoming. Next slide, please, Mara.

We've talked a lot about contracts. And so, what I'll do is I'll jump down to just a brief update on FCMS. We do provide slides that have some detailed information on FCMS each cycle, but I also wanted to take the opportunity to include this in my director's report that's a little bit more accessible than maybe the slides are at times. So, we've been making significant progress on FCMS. We had four vendors who presented to us last month in the building who were demonstrating their products. We were able to narrow down to two with those last two vendors. We've currently requested their last and best price, I believe is close to the phrase that the procurement folks use for that. Oh, best and final offer. See, I was a little bit off now that I look at my notes. We've requested that information. We're on track to issue a notice of intent to award in October. And so, we're excited about moving forward and actually having a vendor in place to be able to provide us with the software that we're going to need for FCMS to get off the ground.

We also had our first Rules Advisory Committee meeting on the 6th of this month. We have a wide variety of members consisting of attorneys from different types of practice types and from rural and urban areas, investigators, contractors, contract administrators and the public. We're starting with baby steps for rules. We're talking about definitions. We're talking about acronyms. They're foundational. They're very important. They're also a little bit dry, but that's where we are beginning as far as our rulemaking is concerned. We're working on surveys for the RAC members, the Rules Advisory Committee members, to schedule future meetings. We're aiming to have some meetings in September and to continue to move forward with that process. And just as a reminder for you as commissioners, the way this process usually works is that

we'll present some initial information for the Rules Advisory Committee members to react to. We will take their feedback and then incorporating their feedback into our draft is what will then result in the draft rules that you all would consider.

And I'll just remind you that at that point, you all can completely rewrite or offer advice on any and all of those items. We're just trying to give you something, again, so you're not creating something out of whole cloth that has been vetted both by internal staff and through this Rules Advisory Committee with a broad membership so that you have a starting point that includes some of the feedback that may actually make it easier as we move forward. Because once you approve the draft rules that you have, then we open up another public comment period, and at least what I've experienced since we've moved to the RAC process at other agencies that I've been at, it makes that public comment period a little bit easier because you've already had a lot of the interested members of the public advising on the front end. And so, hopefully, that kind of results in the same process here at OPDC. So, as soon as we have draft rules, you'll be seeing that coming up in work groups and then on the commission agendas upcoming.

And then I do want to just echo some of the, I hesitate to call it doom and gloom, but Chair, you took the words right out of my mouth that we do have that revenue forecast next week. I have not been asked officially to start coming up with scenarios for what cuts look like yet, but I've seen the smoke. And so, it is something that concerns me. And I do just want to hearken back a little bit to the early days of COVID, to where sometimes when we have to respond to emergent budget issues very quickly, sometimes what we're asked to come up with is less of a scalpel approach to budgets and more of a meat cleaver approach. And so, that's something I'm hoping to avoid. I'm going to be having conversations internally with our folks to make sure that we have some ideas and scenarios of what things could look like so that we can have a thoughtful approach to any proposals that we are basically required to come up with if the worst-case scenario happens. I'm not saying that that will, but I just want to make sure, since we don't have meetings more than once a month outside of the work groups, that folks know that at least the temperature around the Capitol is very cautious and somewhat pessimistic. And so, I just want to make sure that folks know that that's maybe where we're headed depending on what that forecast looks like.

But at this time, I'll take questions that folks have. And also, since I missed one of our meetings because I was on vacation, I want to make sure that these director updates are covering the types of topics that you all would like. So, if there are any other things that you would like me to start including as we go

forward, please also provide that feedback now or just shoot me a message online or something like that too, and I'll be happy to include more.

Chair Jennifer Nash: Thank you. I really appreciate your comments and your information. Are there questions or comments? Maybe Senator Prozanski wants to warn us all about how bad things might be. [Laughter]

Floyd Prozanski: Well, I think Ken has already done that. I mean, the reality, that's the talk I'm hearing as well. I have not heard of any, let's say, plans or developments of how that was going to be handled. I do understand though, in my limited discussions with people, the forecast is not looking good. It looks very cloudy, if not outright rainy.

Chair Jennifer Nash: Understood. All right. Well, thank you. Any other comments, any questions? All right, it doesn't sound like it. And that is the last agenda item for today. So, we are ending a bit early, which is great. So, our next meeting is September 4th, a work group, full commission meeting. And then September 18th in person, as we discussed. So, with that, I will adjourn today's meeting and thank you all for your time and have a good rest of the day.

Ken Sanchagrin: Thank you all.