

Chair Jennifer Nash: Good morning and welcome to the June 12, 2025, meeting of the Oregon Public Defense Commission. I'm Jennifer Nash, the chair. We are meeting in person today in Bend, Oregon, and we have four commissioners in person and a number of commissioners by video. Good morning, everyone. I see Commissioner Reinhard, lovely, and a lot of people by video. I don't have my glasses on so I'm looking to see if there's anyone else, doesn't look like it. And we have Commissioner Tara Sanford, and let's look at [Inaudible 00:00:39] apply in person.

So, with that, a couple of announcements to start. We have a new commissioner that's been appointed to the commission but is not joining us this meeting because he was appointed right before he went on vacation. So, he will be here for our July meeting, and that is Phillip Gillet I believe is how I would say his last name. And he's a lawyer in Oregon who is the appointed counsel director for eviction council in Clark County, Washington. But he lives in Oregon and is an Oregon lawyer and has a lot of experience with dealing with budgetary constraints and appointed council issues, which he'll [Inaudible 00:01:39] very nicely in the July commission meetings at this point.

And we do have an open voting seat that is under the...the governor's office is updating the appointment [Inaudible 00:01:53] administration. And we have one open non-voting position, and we know that, unfortunately, Commissioner Reinhard is going to be leaving us as a non-voting member. So, we are actively also recruiting for that non-voting member and going to provider positions. So, if you are a provider and are interested in being on the commission, please submit your interest to the board today and go to the website, you've got the page for boards and commissions to be able to take the position by July. And with that, we will turn to an update regarding the unrepresented persons in Oregon courts. I'm sorry, one more thing. We have our executive director, Ken Sanchagrin, here in person, along with various staff members, which we appreciate [Inaudible 00:02:56]. So, with that.

Ken Sanchagrin: Thank you, Chair.

Chair Jennifer Nash: Yes.

Ken Sanchagrin: Just waiting for the slides to get up. So, we just have a few quick slides that will provide a little bit of context of where we are in the unrepresented crisis. Mara, if you could go to the first slide, please. So, overall, we have seen a slight reduction, especially in the out-of-custody pretrial population that is unrepresented. Since May 1st, we've seen a reduction from 3529 down to 3313, which is positive. And that reduction started before May 1st, but I thought May 1st was a good point to target. We've also seen reductions in each of the other three different populations that are unrepresented. Next slide, please, Mara.

What's notable is that this reduction is tied to either holding somewhat steady in several of our counties or seeing reductions in some of our other crisis counties. So, when you look at Washington and Multnomah County. So, Multnomah County is on the slide. Washington County looks somewhat similar to Multnomah, to where we at least have a slight reduction, or relatively holding steady with those numbers. So, Washington, again, from May 1st to today, we see 682 out-of-custody pretrial down to 645, and in Multnomah, 1,252 down to 1,213. So, that's very positive looking. We see a reduction in Marion County. We're holding steady in Coos and Jackson County. The only crisis county where we've seen an uptick, which was occurring before May 1st is Douglas County, where we've seen an increase from 237 to 286 for out-of-custody. Next slide, please.

The next few slides are provided primarily for information. First, we have our THIP program overview that shows the contracting for THIP over time. We are now in our last month of THIP. If you've not tuned in to the legislative hearings that have been focused on our budget recently, the legislature is not funding THIP going forward, and so no new THIP cases will be assigned after the end of this biennium. So, basically, June 30th would be the last THIP day. However, for THIP cases that have been assigned before the program ends, so up to June 30th, that funding will continue. However, there will be no inflationary increase, so the THIP numbers that are current right now would be the ones that would continue going forward for cases that were assigned before the program ended on June 30th. Next slide, please. We also have for information our Betschart numbers here provided on this slide, and I'll skip quickly to the last one. The last is for our Trial Division that shows the case pickup rates for our different Trial Division offices by county, and I will turn it back to you, Chair, if you don't have questions.

Chair Jennifer Nash: Do any commissioners have any questions? If you could just... I realize I'm putting you on the spot a little bit, but if you could talk about what you foresee, if you can, the impact of some of the budgetary decisions will have on the unrepresented, I think that would be... And I realize you do that in very broad terms, but I think it makes sense to talk about that a little bit, if you could do that.

Ken Sanchagrin: That's a good question, and it's one that it's pretty complex and pretty speculative at the moment. I think the thing that we're the most focused on is the end of THIP that I just mentioned. I think it's unclear what the case uptake rate is going to be once that program ends from an hourly perspective. Especially the impact it could have on the budget assignments. To try to mitigate some of that impact, we've been looking at our Trial Division and trying to hold back some capacity just in the last few weeks so that we can be ready to take cases at a higher rate through our office if we see that slow down amongst

our hourly practitioners. So, I think that's the most immediate impact. I think from a budget perspective, we were funded for the mandated caseload, and so I think that as we move into contracting, we can hopefully see some positive movement towards getting more cases handled under the contract, and so there might be some substitution there for the hourly program. So, I think in some ways the budget does align, but then there's some other real uncertainty that we have as we move forward, especially around THIP.

Chair Jennifer Nash: Commissioner Buckley?

Peter Buckley: Yeah, just along those lines, do we have any clarity what the new hourly rate is going to be going forward?

Ken Sanchagrin: We have clarity on the hourly rates for most of our practitioners, and Lisa will cover that in her budget update when she does the legislative budget update near the end of the meeting.

Peter Buckley: Okay.

Chair Jennifer Nash: Are there any other questions related to the unrepresented persons situation? All right, it doesn't look like it. Thank you very much for that update.

Ken Sanchagrin: Thank you, Chair.

Chair Jennifer Nash: And moving next to the budget update from Mr. Amador.

Ralph Amador: Good morning, Chair Nash, members of the committee, and guests. My name's Ralph Amador, I'm the chief financial officer for the commission. I don't have updated budget slides for you this time around. If you remember the last time, we did our best to make sure we got the most up-to-date numbers. Our state financial system doesn't close for another week, so we can't really provide any information off of that. I can say that things are going as planned, and what I have for you today is just some numbers that we can go over, PAE requests, some aggregate numbers to end the year and through May of 2025. So, for PAE, preauthorized expense approved requests for fiscal year '24, we had about 32,000. For fiscal year '25 through May, we've had 36 point 5,000 which is a 14% increase year-to-year. Our '23-'25 totals for PAE approved requests is 68,000 through May of 2025, which is contrary to what we had in '21-'23 of 58,000. So, biennium to biennium, we've had a 16.3% increase in work requests that have been approved.

[Distortion 00:09:54] the AP side of things, and when I say complete, I talk about completed invoices, which means they're moved for payment. For fiscal year '24, we had 42,806. For fiscal year 25, we had 49,305, which represents a 15.2%

increase through May of 2025 from the previous fiscal year. And AP's processing at about currently around 40 days. The payment recap, and these numbers are going to be a little different than the slides you had, were shown to you in a previous presentation, because those numbers went through June 8th, and my numbers go through May of 2025. So, for hourly attorneys, including THIP, we paid out \$57 million. Through May, we paid for THIP attorneys, \$36 million. Standard rate attorneys, we paid \$21 million. Investigation, including THIP, spent about \$30.4 million, with the THIP investigation coming in at \$8.7 million, and our standard investigation at \$21.6 million. To date, we've paid out \$392 million in contract payments through May of 2025, and we've paid out \$169 million for all other expenses outside of agency operating expenses.

The main issue we're dealing with right now is our cash flow, and we're working to ensure that we can pay invoices through the remainder of the biennium. This doesn't mean we're going to pay all outstanding invoices. We always carry forward invoices into the next biennium. As far as cash flow, we're currently operating on a minimal budget for operations, and we've met with all program managers to ensure that only necessary expenditures are made outside of what our normal duties are. This enables us to ensure that all contracts and necessary operating expenses are paid, gives us the projected target to move all available funds to the areas that will still need funding.

We've submitted a request to the Legislative Fiscal Office, the DAS Financial Office to rebalance our projected ending balances in other areas of the budget to cover the expenses that [Distortion 00:12:21] ...daily and monitoring costs daily to make sure that we can [Distortion 00:12:30]. Lastly, I would mention carry-forward activity. We're still carrying an unfunded liability in PAE. What I mean by that, these are work requests that have been approved, but haven't been acted on, and that's normal. And we will be carrying invoices that have been received this biennium to be paid next biennium, which again is normal. Lisa is going to talk about the new budget going forward [Distortion 00:13:03] presentation, and I can assure you that we're on track to balance our budget at the end of this biennium.

Chair Jennifer Nash: Any questions about the budget for Mr. Amador? Mr. Amador, I know we're just two weeks away from the end of the biennium, so not very long, but do you expect that with the direction to only spend what we need to spend, that the invoice processing time will go up? Or are you still planning on continuing to try to process invoices as quickly as possible?

Ralph Amador: I couldn't hardly hear you, ma'am. I'm sorry.

Chair Jennifer Nash: I'm wondering if as we approach the end of the biennium, are you expecting the invoice processing time to increase, or is the plan to continue to try to process those as quickly as possible for providers?

Ralph Amador: I would love for the invoice times to increase, I mean, to come down from 40 days, but just because the mass... We received in May the largest amount of invoices that we ever received. So, we're processing through that, and June looks to be on the same track. As we go forward, the amount of invoices being submitted is increasing on a monthly basis. So, while I would like to see the number go down, I don't see it realistically going down at all through time.

Chair Jennifer Nash: I wonder or just want to confirm, given the current invoice processing time, I want to make sure that the agency is utilizing the emergency provisions that we passed a few months ago to deal with trying to decrease the processing times. Is it your understanding that those are in effect now?

Ralph Amador: Chair Nash, members of the committee, we never stopped doing that. That's a process that we never stopped because of the sheer vol... And it's just the sheer volume. And a lot of the volume are the hourly attorney invoices, since we changed our process from billing at the end of the case to billing monthly. And those are the invoices that take the most amount of time, and they usually come flooding in in record numbers at the beginning of the month. So, the first two weeks of the month we're flooded with those, and those take the most amount of time.

The PAE invoices, while they're not slowing down at all, as you can see by the work requests, they take the least amount of time. But again, we're talking about the volume increase that we're encouraging that, and we haven't seen anything like this before. And again, like I said before, staff is getting tired. I've got three or four people out sick right now and one or two out on FMLA. And while these people are out sick and on FMLA, they're still logging in to do work. That's how dedicated this team is, including the PAE team. So, they're working as fast as they can and as diligently as they can to get stuff. But again, the sheer volume of what we're getting is stuff that we just haven't seen before, and we never stopped the emergency protocol.

Chair Jennifer Nash: I appreciate it. Commissioner Mandiberg had a question.

Susan Mandiberg: This is just a point of information. If a provider submits an invoice and there's some kind of technical problem in the submission and it gets sent back, does that invoice go to the back of the line or is it picked up at the place it was at where the problem was discovered?

- Ralph Amador: Chair Nash, Vice Chair Mandiberg, that invoice state does not lose its place in line. We reach out several times to make sure that we can get the proper information for them. We don't want them to go to the back of the line at all. And if there is a problem or somebody needs something very quickly, our AP manager, Karla Bethell, will step in and process stuff, and she's done that several times to make sure that if there's something that's wrong and people can't get stuff done, that we get it done as quickly as possible. We want to get people paid as quickly as we can, and the last thing we want to do is hold anybody up.
- Susan Mandiberg: A particular provider repeatedly has problems with the submission. Is there someone who can work with that provider to make sure that they understand what they need to do so they can do it more efficiently the next time?
- Ralph Amador: Chair Nash, Vice Chair Mandiberg, we routinely have people that have issues with submitting bills and we do sit with them, and we have numerous interactions with folks that go unnoticed where we step by step walk them through sometimes three or four times to try and get them in the system at all. And oftentimes, if they can't do that, get it right, that's when our AP manager will step in and on the phone, walk them through and get stuff paid for them. So, we do take extraordinary measures. Again, that takes away time from everything else, but we do take extraordinary measures on a regular basis to make sure folks that have problems submitting invoices get that stuff done.
- Susan Mandiberg: Are aware, I'm sure, some of us sometimes are contacted by providers who had some issues, and if the provider indicates to us that the measures you've just outlined haven't happened, I assume that talking to you would be the right step to take?
- Ralph Amador: Chair Nash, Vice Chair Mandiberg, yes, I'm happy and I have stepped in. I've got multiple emails to where they're saying I'm not getting help or I need help. And again, we walk through this and if I have to hold people's hands, I'm happy to do that. But again, we drop everything to make sure that...the last thing we want to do is hold somebody up that is having technological problems. But sometimes when folks just don't turn in an invoice or instead of following the procedures of separating things out so that the system will accept it properly, we'll have to step through that with them. But again, we never turn people away. And there's several times where we just stop and help people to get through this. Again, we keep a record of all the interactions with folks to make sure that we're not going over things. And I guess there are a handful of folks out there that have problems with the system and that we've got numerous interactions with them that have walked them through this.

Susan Mandiberg: I know what goes on internally so that we can respond appropriately to people who contact us. I appreciate it.

Chair Jennifer Nash: Commissioner Reinhard.

Brook Reinhard: Thank you. I just had two quick comments. First of all, I've been critical in the past of the time that OPDC has to pay contractors and how long it...and I don't just mean attorneys, I mean providers, particularly investigators and other folks who need the money on a very timely basis. I continue to have that critique. But the other thing I want to say is I really appreciate the folks in the PAE department who do the work. I think they do an excellent job, and I particularly want to highlight Kristen McClelland. She does a great job when there's a question about very quickly emailing. It's very hard to get ahold of people on the phone at OPDC, but by email they're quite excellent at responding very quickly, particularly Kristen. So, I just wanted to highlight that because I'm usually complaining about something, but I wanted to highlight this. So, thank you.

Chair Jennifer Nash: Thank you. Are there any other questions, comments, concerns? Yes. [Inaudible 00:21:23]

Rob Harris: I do. I think there does seem to be a disconnect in the information we're getting between this particular issue on payment about invoices being submitted and either kicked to the back of the line or not kicked to the back of the line. I think I'd encourage, I guess, folks, providers who have that issue to contact me directly. I need details. I want some details on this. So, I will be happy to take a look at this because we just keep getting different information from providers in the agency and from Mr. Amador. So, if you feel like the best way to get the information is to go to the commission, this is one reason why we're here. I mean, I don't want to hear every single complaint, but this is very important. And because of the level of disconnect from what I'm personally hearing, I'm more than happy to take some details and pass that along. Thank you.

Female: Same here.

Chair Jennifer Nash: All right. Other questions, comments? All right. Okay. Now we're going to next move to, a little bit early, move to the provider feedback portion of our commission meeting. And before we call up panel members, I just wanted to briefly talk about this particular segment of the meeting, what we're doing, what we're hoping to accomplish, what we want to be doing in the future. So, when we had our last in-person meeting at Medford, part of that meeting developed a more open line of dialogue and communication with providers directly, and the commission found that to be really helpful. We were able to elicit some information that we...particularly around barriers to representation

that we had not heard previously and found that to be much more helpful and effective, really, than public comment, which we also love public comment.

But public comment is one side. It's direction from people to us, and then there's never any information that goes back. And so, there isn't really an opportunity to ask questions or to have any sort of input. And so, we wanted to initiate a process where there was a more open dialogue and discussion that went back and forth. And so, that is what started this, our now first provider feedback segment. We plan to do this in future meetings as well and plan to have kind of an open portal, for lack of a better way to put it, of people at any time who can submit questions. And the idea will be if these are easy operations questions, some agency can answer that. But if they're more policy-related questions or important information that you think the commission should talk about, we're going to do that. We're going to engage in these dialogue and feedback sessions pretty regularly and address topics that are coming up that are in common that people are talking about and asking about.

With that, because this is an unscripted, open session, I want to be clear that we're not going to make any decisions, and the open discussion that we may have here doesn't mean that that's what we may be deciding in the future. It's that things won't be set in stone. This is really an opportunity to have an open dialogue. And if you've attended any of our workgroup sessions, watch those. You'll see that those sessions are really opportunities for the commissioners to talk about ideas and to have a more open dialogue with the agency. And that's what we've decided to do as well, kind of a workgroup session in a public meeting with providers.

And with that, a giant [Inaudible 00:25:33]. [Laughter] I want to just also discuss who submitted feedback, what kinds of feedback was submitted before we call a panel. We'll have six people in person, one person who's going to appear virtually. We posed three questions that we would like to have answered or provided feedback regarding. And we also received public comment, which was public comment, but also some of the information really also was answering the questions in our feedback session. And that was from Olcott Thompson, who's here in person, but didn't sign up to talk in person, just submitted written comment, which we found to be very helpful, I found to be very helpful. We received session written submissions from Ernest Zacker, Melissa Parker, Jane Claus, Lisa Bright, Cindy Borders, and maybe Cindy was the last person. No, I'm sorry. Amy Counter and Adam LeBrun, which all of that was very thoughtful and very helpful, and we appreciate your written submissions very much.

We have, just to refresh everyone's recollection, three feedback session questions that were the prompts. Question number one, OPDC has a limited ability to effectuate systemic changes on its own, as we are impacted by

external pressures, budget constraints, and decisions made by other system partners, the governor, and the legislature. What suggestions do you have for the commission to help us solve the unrepresented persons crisis that have not already been discussed? What feedback do you have for the commission and agency on how we can reopen – I'm sorry, that would be nice – how we can respond to these limitations more broadly? Question two, are there barriers to representation you as a practitioner are experiencing in your local area that you think OPDC is unaware of? Do you have any suggestions for policy changes OPDC can make to reduce barriers to representation? And question three, how would public defense work be different if the courts had the ability to reduce misdemeanors to violations without prosecutor agreement? Do you believe that courts in your county would use this tool in terms of [Inaudible 00:28:10].

To be most effective for the commission, what we thought we would do is have all of the people who signed up to speak in person come up together, and we've grouped the people who have signed up to speak by groups in terms of the questions. And so, we're going to, rather than do person by person, we're going to do question by question. So, that's why we're having everyone come up at the same time so that you're all available and we can go through each of your comments. So, Jennifer Myrick is appearing virtually, I believe. Is she on the...? She's not. All right. So, in person we have Weston Koyama, Josie Seidler, Grant Hartley, Carl Macpherson, Tristen Edwards, and Alex Bates. If you could come up and sit at the table in front of us, we would appreciate it. And we are a little early, so just keep an eye out for Jennifer any moment.

Chair Jennifer Nash: All right, so who are we missing? I see Mr. Hartley, Mr. Macpherson. If you'd introduce yourself.

Alex Spinks: Yeah, Alex Spinks.

Tristen Edwards: Hi, I'm Tristen Edwards.

Chair Jennifer Nash: Okay. So, we don't have Josie Seidler and Alex Bates.

Tristen Edwards: No, Alex is...

[Crosstalk 00:29:52]

Tristen Edwards: He's on there.

Chair Jennifer Nash: Yes, Weston Koyama, thank you. All right, well, they can come in, they can come on. Well, you've already introduced yourselves, thank you. I guess I'm facilitating this and doing a marvelous job so far. So, question one group, it looks like everyone answered, so that makes it easy. So, let's just start off with

your suggestions, and then we'll just talk about them. So, I'm just going to go from left to right.

Male: [Inaudible 00:30:30].

Chair Jennifer Nash: My left, thank you. And now you're going to have to remind me again because I really am horrible at this, Alex. Okay, so I'm going to put you in the number one position. All right, now I'll remember your names. Thank you. All right, let's start with you, Mr. Spinks. Why don't you talk about what you think, what feedback you have for the commission about how we can respond to limitations more broadly with the unrepresented persons crisis.

Alex Spinks: Yeah, thank you very much, Chairperson Nash. So, I have been working in public defense now since 2012. I started as a law student at the Public Defender's Office at MPD in Washington County, then worked in Douglas County, went back to Washington County. I'm now a deputy director in charge of the murder and Measure 11 team of the Public Defender of Marion County. In that time, I've seen a lot of changes that have happened with the agency and the commission and the way in which we've been responding to appointing and having quality representation for individuals charged with crimes.

The issue of the unrepresented crisis is one that has been coming for a long time. In the time that I've been doing this, caseloads have ballooned. People were getting burned out. A lot of people were leaving. A number of solutions have been proposed over that time in order to try and assist providers in what it is we are trying to do. I've likened it to having someone who has eaten nothing but pizza and cheeseburgers their whole life then going on a crash diet and expecting to see change their entire life. What we need is to take a hard look at where it is we are at and make much larger changes in what it is we are doing, especially with where it is we are putting funding. There is a need to fund a number of different things, including investigators, investigators in nonprofits having their positions fully funded. There's forensic evaluators, including mental health experts, who are getting underfunded, especially compared to the Oregon State Hospital.

But what I want to talk about today specifically is the supervised practical pathway, our SPPE program. PDMC is now on our second round of SPPE candidates coming through. We finished our first round just recently. That included two participants who came from law school, worked in our office as law students, then went in through the SPPE program. One who is close to finishing has handled approximately 95 cases in the time that they have been working with our office. We now have four provisional licensees starting at our office this week. We are very excited for where this program's going. As someone who worked as a law clerk previously, I know what good, effective

mentorship at that level can do for an individual who is interested in doing public defense work. We need to make sure that we are focusing on building a very good foundation in the people that we have coming into public defense so that they stay in public defense.

So, my recommendation or my request for this commission is to focus on that SPPE program. Fund the positions not just for the individuals who are going through that pathway to admittance to the bar, but also to ensure that the people who are doing the mentorship are also properly funded. These are the individuals whose cases are being appointed to them under their name. They do a lot of work in supervising the individuals who are doing this practical pathway. They make sure that they are getting the support that they need, the training that they need, and that they are staying invested and have a clear path moving forward from when they get their bar license and where it is that they will go. We are working to build this program in tandem with Willamette University's law school. We are working very closely with their clinic and Professor Wohlers.

We also have certified law students who are coming from Willamette University to work with us. We also have been assigning more seasoned attorneys, such as myself, to work with some of these law students to help them with projects and keep them invested in what public defense looks like further down the road. So, while there are a number of things that need to be funded and need to be paid attention to to ensure we are building that baseline, rather than piecemeal fixing issues as they come up, today I do want this commission to pay close attention to that SPPE program, the success that it has, and the potential for success that it has, continuing forward.

Chair Jennifer Nash: So, Commissioner Lininger.

Tom Lininger: Thank you very much for those helpful comments. And I have a question as one who is very interested in taking advantage of the supervised practice pathway, both to assist with the shortfall of legal services for the indigent and also to help diversify the bar and give chances to people who might have trouble with the bar exam, and my question is whether in your office there is much of a loss of productivity among supervisors of such provisional licensees? I mean, how great a burden is that imposing on attorneys? Is there an opportunity cost as far as what the supervisors might otherwise be doing? Is there a net increase in the overall effectiveness of the office? Thank you again for your comments.

Alex Spinks: Yeah, I would say with anything, when you are doing something like this, there is going to be, at least from the more seasoned attorneys, they're not doing as much casework necessarily or high-level casework as they could be. But the kind of exchange on that is the attorneys who are going through this practical pathway are getting much better experience and learning much more than they

would studying for a bar exam, and the long-term effect of that is that they're able to handle more cases. The idea that so far, I have no reason to believe this wouldn't be true three, four, five years from now, staying in public defense and doing those higher-level cases. And so, while there is that trade-off of the immediate with the supervisors, because it is a heavy lift for the supervisors. We are very fortunate at PDMC to have the attorneys that we do as the supervisors. Carrie Peterson is the one who handled the first two SPPE candidates that came through our office. She took it very seriously. She did a very excellent job with those SPPE candidates. It does, however, limit her ability to do J Law cases, Measure 11 cases, things like that. But again, the long-term, which is what our focus is on, is that it's going to be better for public defense.

Chair Jennifer Nash: So, I have sort of a nuts-and-bolts question about that. So, if you have one person who's a 1.0 FTE who's supervising two SPPE lawyers, and the cases are all assigned to the supervising lawyer, how does that... So, you have three lawyers doing one MAC, or do you... How do you do that? That's what I'm wondering.

Alex Spinks: Yeah, the nuts-and-bolts part of that, I know that there's two presentations that are to be done here at the conference this weekend, which I think that might be a good question for them on the nuts-and-bolts of that. Miss Peterson, who, like I said, is the one who supervises the SPPE program, would have a better idea specifically on the MAC and how that is ultimately being utilized. I've been assisting somewhat with it, but not nearly to that extent. So, I think maybe the presentations this weekend would have a better answer for that question, as far as that goes. But the requirements of this are similar to the CLS, where they need the client approval, they need the individual attorney who's handling these cases. The one SPPE that we had, like I said, handled 95 cases in the time that they were there, which resulted in very good results for clients. We got a number of dismissals from those cases, and they are still with our office.

Chair Jennifer Nash: So, here... I'm thinking about this from a contracting perspective, so not so much the internal, like your side, but from our side. Do you think it's a – within budgetary restrictions, of course, or parameters – do you think it's a better model to allow a lawyer that's doing SPPE supervision to far exceed their MAC, knowing that there's people under them that are taking the cases? Or do you think it's more effective to just separately, outright fund a supervision and training position for a lawyer to supervise, train, and mentor SPPE lawyers?

Alex Spinks: That is one I think it's going to be highly dependent on the individuals doing the SPPE pathway and the individual who's doing the supervision. It might be better to simply fund them as an SPPE supervisor and then fund the SPPEs at the same amount as a misdemeanor attorney. But obviously, when they're doing that, they're not going to be able to handle the same number of cases.

Chair Jennifer Nash: Yeah, we have a reduction now for first-year lawyers to take a reduced number of cases. Okay, well, that's helpful. Does any... Yes?

Rob Harris: A couple of questions. Thanks, Alex. I appreciate that information. I think it's a really good start to the program. How long was that lawyer licensee, I'm not sure how you refer to them, lawyer, we'll call them lawyers. How long were they working for you at the office to do those 95 cases?

Alex Spinks: So, they were with our office as a law student when I started there, which was in September of 2023. And then I believe they entered the SPPE program in June of last year. So, they're approaching the end, so it's about a year that they've been doing the SPPE [Inaudible 00:42:01].

Rob Harris: Are they still with your office?

Alex Spinks: Yes.

Rob Harris: Okay. And it's probably too early to tell, but have any of the individuals going through the program received licensing? And if so, are they still in full attendance?

Alex Spinks: So, the one in our office who is staying with our office is finishing up to receive licensing. My understanding is they have one last thing to do, and so that was actually a memo that they wrote for one of my cases.

Chair Jennifer Nash: Could you speak up a little bit?

Alex Spinks: Yeah. So, the person in our office who I was referring to, she has one last thing that I believe needs to be approved and then would receive full licensure.

Rob Harris: Thank you. So, I guess I have just two comments. Number one, I think that it would be valuable if the agency developed some sort of standards for this or templates, and I think it would be multiple templates because what works for... Because I think this is an opportunity for small lawyers and law firms, onesies and twosies, as I used to call them, to potentially bring people in to help them with a caseload and figure out how that's going to work. Honestly, it's very similar to mentoring that I used to do at my law office to bring people in. And then the template has to be pretty flexible because there's different kinds of providers, different types of places, different blends of practices, but I think it would be helpful to maybe have some guidelines at least. I don't think it needs to be focused on what a larger law firm like MPD needs to do or chooses to do. I think it really has to be flexible so people who want to do this and do a good job

can have the opportunity to do this. And, yeah, the funding is going to be a big piece of this, how that's structured. Thanks.

Chair Jennifer Nash: Any other comments or questions for Alex?

Susan Mandiberg: Yeah, I have one. Hi, Alex. Have you or anybody else involved in the program had contact with any of your legislators to make sure that the funding is available for us to do all the things that you're suggesting, which are great ideas?

Alex Spinks: So, I have not spoken to them directly about that. I would be surprised if they had not had that kind of contact.

Susan Mandiberg: You don't know offhand who might have...

[Crosstalk 00:44:14]

Alex Spinks: I don't know specifically.

Susan Mandiberg: Because obviously, the more we're funded, the more we can support it.

Alex Spinks: Yes, yes.

Susan Mandiberg: We have more control.

Alex Spinks: And, again, I want to reiterate the importance of the program is in its long-term benefit.

Susan Mandiberg: For sure.

Alex Spinks: There may be short-term costs that we're going to be looking at in the reduction of certain attorneys and the amount of cases they can do, but, again, this is avoiding, to go back to my analogy, the crash diet and focusing instead on long-term healthy changes that can lead to long-term success.

Susan Mandiberg: So, again, I'd like to just emphasize that, although we can agree with you 100% on that, which I think we do, getting the other partners in the system, the legislature, the governor, the district attorneys, the courts, to also focus on the long-term solution as opposed to the immediate crisis. If everybody was working on getting that focus shifted, that would be a big benefit to all of us.

Alex Spinks: Yes. Yeah. It's hard. There's a crisis that's in front of us right now, and there's a lot of focus on what we can do. There are a lot of people out there who are facing criminal charges, who are having their lives interrupted by this crisis.

Those of us who are doing this work are not blind to this. We are doing what it is that we can, but at the same time, simply sending an attorney in with 500 cases or overloading the attorneys...

Susan Mandiberg: Doesn't work at all, obviously.

Alex Spinks: It's not going to work. Instead, we're, as I said to the judges before when they try and put unreasonable timelines on cases, I can do this case like that right now, or I can do it the way I want to in two years when it comes back on PCR.

Chair Jennifer Nash: I know, yeah. Commissioner Reinhard.

Brook Reinhard: Oh, hi, Alex. I have just two questions for you. I think I'll just pose the two questions together, and you can answer how you like. The first question is, I know when SPPE candidates come in, they really, really want to make it work, and they're probably willing to agree to anything, whether that's a good idea or not. Do you think there's a way to work with the agency and these provider offices to make sure that when these candidates come in, they're able to make, say, a three-year commitment? Because the first six months is incredibly resource intensive for offices, and not a good investment if people don't stay in. I know you know that. So, my first question is, is there a way that you would suggest that we could help these people commit to a long enough term to make it worthwhile? Because I think it's a great investment if so. My second question is, do you think it would be helpful if OPDC could assign a staffer long term to work with providers and the bar, particularly the SPPE portion of the bar, to make tweaks to the program so it's more effective long term?

Alex Spinks: I'll start with your second question. I don't necessarily see a downside to that because when we look at the SPPE program, or realistically any number of programs, when you're trying to fit that into a number of different areas of practice, it doesn't always translate. So, having someone with the commission, maybe a provider who is doing the SPPE work regularly, working with someone on the bar to make the necessary tweaks to ensure that it's working well, I think that would be beneficial to make sure that we're getting what it is we actually need to be doing for the people who are going through the program.

As far as the longer-term commitment, I don't know that there's a way to necessarily do that. I agree that there's times where especially new lawyers will sign up for nearly anything, including a time commitment without fully knowing. I think this is one of those risk/reward type things where if you get people doing it right, you have the right kind of mentors, you have them doing the right kind of cases and working it through, that will work itself out. That will get people who stay in public defense because they have seen what the work does, how the work moves forward, gotten the support that they need, gotten the tools

that they need to stick with it. And while we may lose one or two every now and then in a cohort that we bring in, I think overall we're going to see more people staying in public defense for longer periods.

Chair Jennifer Nash: Okay, thank you. That was very helpful. That was great. All right. Mr. Macpherson, you're up.

Carl Macpherson: Good morning, Chair Nash, Director Sanchagrin, members of the commission, my name's Carl Macpherson. I'm the executive director of Metropolitan Public Defender. I've been a public defender for 27 years in three different states.

Chair Jennifer Nash: Speak louder.

Carl Macpherson: Yeah. I've been a public defender for 27 years in three different states. I have a unique perspective on what I think works and what does not work and what I believe is problematic in Oregon and why we are where we are at. There's three topics I want to talk about. Number one was I agree with what Mr. Spinks said, and I want to focus on long-term solutions rather than short-term solutions that have been bandied about by other people in the state that are not effective. Secondly, I want to point out some solutions that have been put forth by public defenders in Oregon that unfortunately have been ignored by not this commission but other people in the state, and I believe the commission should be aware. And third, I want to talk about the differences between grand jury states and preliminary examination states. I truly believe that would be the biggest game-changer that the state could do to take care of the unrepresented crisis.

So, in terms of focus on long-term solutions, and I apologize, I know some of this has been discussed, but I believe there's more context that's needed, so I want to go through it. I'm sure you'll stop me if I'm going too far. In terms of survey and data that we have, we have data from OCDLA showing that from surveys, the reason why people left full-time public defense during a roughly 15-month period of time, the top two most significant reasons were compensation and caseloads. That's important.

Secondly, we know from OPDC's data over an 18-month period of time that a quarter of your full-time contractors, it's actually about 21%, left public defense. They left their full-time contract. Sixty-seven percent of them left public defense altogether. That is a horrific stat when you're trying to actually have a system work in the state of Oregon. Twenty-six percent of that 21% that left went to the hourly program. There's comment and discussion from people that the private bar is the answer. I disagree, and I believe the data bears that out. If the private bar was the answer, we wouldn't be in the state we're in now. Because in August of 2022, this commission adopted, according to the Sixth Amendment

Center, the second highest hourly rates in the United States of America, and yet the unrepresented crisis has continued.

I want to say thank you for the commission because I believe you're in a very difficult position. I think you're kind of in a no-win position because of the way the statute is set up and based on the fact that when there are limited meetings with other people outside of public defense [Inaudible 00:52:24], they generally spend their time bashing the commission or bashing the providers, which is unproductive. And I believe that part of that is political because they don't want to self-reflect on their actual contribution to the situation we're in. So, that's why I bring up those stats. I'm not upset with the commission or the THIP program. I want to explain, though, because I don't think people truly understand how that has bled the full-time providers.

And so, I want to go a little further with that. When a full-time provider leaves, we generally get about 30 days for a resignation. Sometimes we get less, sometimes a little more, but it's about 30 days. Because of vertical representation, which is in the contract, and which is absolutely best practices, and the fact that often those individuals that resign say they're not going to do public defense anymore and don't want to take cases with them. They say they're not going to do public defense anymore. So, we have to cut them off from pickup for those 30-day window that they have resigned. That is 30 days when an individual is not picking up clients for cases. There are not people waiting outside the door to come into public defender offices or public defense work, and that is very clear from the data. It takes anywhere from one month to four months on average to replace that individual.

That means you have two to five months on average where a slot is not picking up cases or clients. That is one of the most significant contributors to the unrepresented crisis. You lost a fifth of your full-time providers. When you lost that, you lost two to five months' worth of productivity and two to five months of picking up cases, and 67% left public defense altogether, and 26% went to hourly. And of the 26% that went to hourly, I want to give you some statistics on that as well, because this is extremely important for people to understand. When people make claims that there's more public defenders now, that's inaccurate. There's some accuracy to it, but the context is grossly missing. And the context that's missing is that the full-time providers are the ones that are doing the majority of work. The hourly providers, and this is based on data and actual analysis, in a 33-month period of time, 33 months, 35% of your hourly providers took five or less cases.

Male:

Could you speak up?

Carl Macpherson: Yes. In a 33-month period of time, 35% of your hourly providers took five or less cases. So, the hourly program, which costs a significant amount of money, is just not productive to the short-term, long-term health of the system and does not help the long-term system in terms of having the full-time providers being prioritized.

Rob Harris: Mr. Macpherson, is that data broken down by case types?

Carl Macpherson: It is not broken down by case types.

Rob Harris: All right. Thank you.

Carl Macpherson: I could do that, but five cases in 33 months.

Rob Harris: Five murders in 33 months would be a lot. Yeah.

Carl Macpherson: I mean, in 33 months, our office is taking the equivalent of six murders a year, so over 33 months, that would be the equivalent of roughly 11 murders.

Chair Jennifer Nash: I guess, I mean, to push back a little bit, I mean, I don't disagree, but I think the idea about hourly was not for those people to be taking a full-time caseload, but those people are the private bar lawyers who are just pitching in and helping out, so to speak. So, if they're just taking one case here and there, I mean, we know that there are not enough full-time, let me even make it more granular, there are not enough public defenders under contract, regardless of entity, whether it's State Trial Division, consortia, nonprofit public defender, to cover the caseload. And we're not going to be able to get all those people in. So, if there aren't enough lawyers to get all those people in, then what naturally I think you look toward, if you can't bring people in, is, okay, you've got private bar lawyers to hopefully pick up the remainder of those cases.

So, I am not surprised to hear that that number of cases took fewer than five. Where I disagree with you, and me personally, not for the whole commission, is your comment that that's just not productive. Because it depends on what your goal is, right? If your goal is, well, private bar lawyers should be taking a full-time caseload, then sure, you could say that's not productive. But if the goal is to have those lawyers picking up extra cases that we can't get covered by full-time or contracted lawyers, then it is productive. So, I guess I want to know, what do you mean when you say productive? What's your definition of not productive?

Carl Macpherson: Sure, and I understand where you're coming from, Chair Nash, and I worked in a state where I, for four years, I was a private defense attorney, and I took conflict cases. Those were overflowing conflict cases, and I wasn't paid hourly. That

would be the goal of the hourly program. That's my point, that's not what's happening. You're losing 21% of your full-time providers, and 27% of them are going to the hourly program because they're leaving full-time caseloads, and now they're taking caseloads at a fraction, and billing significant amounts of money.

Chair Jennifer Nash: I guess we're talking about two different things. Yeah.

Carl Macpherson: No, I believe the hourly program is absolutely necessary and critical for the state to maintain. I'm saying that the way it's operating now, and with THIP, is you've bled from the full-time providers, allowed people to take much fewer fractions of a caseload, and bill hundreds of thousands of dollars on those cases. That is really problematic. When people make comments, public comments in these sorts of meetings, that the private bar is the answer, and they attack our office, those individuals often left full caseloads to now be taking a fraction of the cases. Which is pretty interesting, when you get some of the comments.

In particular, sometimes individuals leave full-time providers because they can't handle full-time cases. They can't do the work. So, they go to hourly, where they can make a lot more money doing so. The reason why this is important for the commission is, I think, pretty obvious, but also because in the statute, in 151.216, talking about what the commission does have control over, you have control over policies and procedures, and in fact, you're supposed to adopt policies for public defense that ensure compensation, resource, and caseloads. Now, I know the legislature wants to change the language from national and regional best practices to according to the US Constitution. That language, in some respects, came from the ABA 10 Principles, and the ABA 10 Principles directly written in are based on the Constitution. It's based on the Sixth Amendment, so it isn't a real, true difference. This is even more important because not just because of the attrition and the difficulty in recruitment and retention, but the fact that the difficulty in recruitment and retention is going to get exponentially more challenging because of a decision that was made on June 9th this week in the Washington State Supreme Court.

Chair Jennifer Nash: I'm going to interrupt you for a second, only because I see that Commissioner Lininger's had his hand up for a really long time, so I'm going to let him jump in. Go ahead.

Tom Lininger: I apologize for interrupting your presentation, and I wanted to thank you for making many valuable comments during the public comment periods in our past meetings and also making a presentation in the past meeting. You have been a very important figure leading the bar up in Multnomah, leading your office I mean, and then also informing us of your on-the-ground insights. So, my particular question is, as you mentioned the importance of full-time providers,

I'm nodding my head. That makes a lot of sense to me. I also agree that the private bar has an important role to play, but I'd be interested to hear your thoughts on this particular question. Is the OPDC optimally deploying resources for state full-time providers? I know we have some full-time providers up in Multnomah County. My colleague Commissioner Reinhard has explained that sometimes when the state hires for the state-level full-time providers, it may be sort of stealing away talent from some of the local full-time providers, and I would just be very interested to hear your insights because you've mentioned how important full-time providers are. Is the state-level attempt to create full-time public defenders, is that optimally complementing the local full-time providers, or how would you advise us to staff up and deploy state-level providers?

Carl Macpherson: Thank you, Commissioner Lininger. I appreciate it, and I appreciate the question. I was supportive from the very beginning of the State Trial Division. I maintain support for the State Trial Division. The concern I have is really three. One, the data appears to show that 11 of the 20 State Trial Division attorneys came from nonprofit providers. That's problematic. Secondly, that when the State Trial Division was rolled out, they were having Oregon Project numbers not met, so there was a disparity in terms of caseloads at the beginning. And third, State Trial Division attorneys make more money and have better benefits, and so you have disparities. I believe that you need to eliminate disparities, and I believe the organization, the OPC, has already done that, and that the disparities have been or are almost eliminated in terms of workload or caseload, which we greatly appreciate. I know that Senator Broadman in his budget bill talked about the idea of OPDC not, if there's a vacancy, not hiring from nonprofits and try and find someone else to bring in to add because you want to increase, not just move chairs around with the State Trial Division. I agree with that.

The issue we're going to have, and that's why I pointed out 151.216, is always about compensation in terms of State Trial Division. I just think the legislature needs to understand and recognize that you don't want to have disparities within your system, and that as much as you can do to balance out, it doesn't have to be exactly, but if you can get comparable or reasonably close, that would be very helpful. So, I do believe the State Trial Division's really important because you're always going to have conflict cases, you're always going to have overflow situations, and you're going to have situations where if an entity or a county is underutilized and you have state employees, you can use that state employee to go into that county and take on clients that need representation. So, I do believe it's an important part of the ecosystem.

Chair Jennifer Nash: Thank you.

Carl Macpherson: You're very welcome. I'll try to go a little quicker. But what's really important is the West Virginia State Supreme Court decision on June 9th of 2025. I presented on a graph, a chart I created, which I will present to you again, and I will send it around, but it shows Oregon Project numbers, Rand Study caseload caps, Washington State Bar, which is in line with them, and then MAC, which is two or three times. The Washington Supreme Court on June 9th adopted a proposal that was put forth by Washington State Bar that is going to have caseloads that are going to be a fraction of what we are expected to handle in this state. That is a game-changer and is going to be significantly problematic for us. Last summer when we were recruiting, we lost four candidates to King County Public Defender in Seattle. They left, and I actually reported them. Many of them were law clerks in our office over the summer, and they told me, "Carl, we're going to King County because of lower caseloads, more pay, and pensions."

We can't compete with that. And when you have the Supreme Court acknowledging the studies, the Rand studies, the local studies that were done because the Washington State Bar proposal is based in part on the Oregon Project. They considered that when they went forward with that proposal. So, the fact that the Washington Supreme Court has adopted that and has a 10-year rollout period is going to impact us. And so, it's also important because MAC was adopted, and one of the aspects, one of the metric points for MAC when it was adopted by the commission and OPDC was OPDC said, "We're going to look to our neighbor in Washington and look at their caseload caps as we're building out MAC and thinking about what MAC should be." And the metric they honed in on first was that misdemeanor caps in Washington State were 300. That's why MAC in Oregon for misdemeanors is 300.

So, if Oregon is going to look to our neighbor to the north on our caseload caps, then Oregon needs to look to our neighbor to the north when they are in line with what the national study says, Oregon Project says, and otherwise, or we are going to fall behind. And we're going to fall behind on the counties that border Washington because if you're working in Portland, you live in Portland, and you're working in Portland, you are now incentivized to work in Vancouver. What do you choose?

Susan Mandiberg: So, Carl, I agree with what you're saying, as you know.

Carl Macpherson: Yes.

Susan Mandiberg: And I believe that the commission would be happy to, A, do away with MAC and go to a workload model because that's what we agreed, [Laughter] that's what we voted on.

Chair Jennifer Nash: And lowering caseloads.

Susan Mandiberg: And lowering caseloads. We have voted on all that and agreed on all that. We don't have the power to make it happen. And so, if the legislature does not want to go along with what we think are the best practices, which agree with what you're saying, do you have suggestions for how to affect legislators to get them to see exactly the problems that you're talking about and the benefits of lower caseloads and better compensation? If we could pull those things out of a hat, [Laughter] I think this commission would do it in an instant. So, have you talked... I know you talked to legislators. When you talk to them, how do they respond to this kind of input that you're making here?

Carl Macpherson: And so, again, I understand exactly what you're saying, Commissioner Mandiberg. Yes, talked to legislators, prosecutors, judges, policymakers. And the problem is, from my perspective, that they are in the mindset that the Oregon Project's a joke. It's not accurate so disregard that. The Rand study doesn't apply to us. We're in an unrepresented crisis. And they don't want to take any accountability about any contributions they've made. And so, it's easier to bash OPDC and bash the providers. And that's what we see.

Susan Mandiberg: So, exactly.

Carl Macpherson: Yeah.

Susan Mandiberg: And so, the problem is, jointly with us and the providers, figuring out a way to interrupt that narrative and change that mindset, and I think part of what question one is focused on is finding some new ideas [Laughter] about how to work together to change that narrative. And boy, I'm sure open to some ideas about how to do that.

Carl Macpherson: I agree. And I think there need to be context to what I wanted to say, and I believe some of this has not been discussed, has not been on the record, and people aren't discussing it. And certainly, the Washington Supreme Court opinion is a brand-new opinion this week that is going to have a significant impact. So, I believe what the commission can do is talk about these ideas with, and I'm not saying you haven't, I think, but bringing up the Washington Supreme Court order and how that is going to have a significant impact. And quite frankly, it's not about justification, but it affirms what you've been talking about, what you've been trying to do. And how does Oregon ignore what the Washington Supreme Court says? How does the Oregon State Bar ignore what the Washington State Bar has done? And I understand it's a different process in Washington than it is in Oregon. I understand that. The process is that the Washington State Bar is supposed to come up with a proposal in a few [Inaudible 01:09:33].

Male: [Inaudible 01:09:33] what?

Carl Macpherson: The Washington State Bar is supposed to come up with that proposal by regulation or some sort of provision in Washington. That's just the way it works. And then the Washington Supreme Court adopts it. I understand that. But the Oregon State Bar should be looking to the Washington State Bar. And I believe that this is discussion points that need to be made. The Public Defenders of Oregon has solutions that we have been discussing, I think that need to be looked at by the commission as to what you believe has not been discussed with policymakers and legislators, and that you believe you can put forth. Because there are many solutions within our document that would cost zero cents, and it really just involves bringing the other members of the system to the table to have an open, honest discussion about where we are and how we can have a healthy system.

And I do not want to put any pressure on Director Sanchagrin, and so I don't want that to be perceived this way, but when OEAA comes out with a statement saying that Director Sanchagrin is a great choice and they have a lot of optimism, when they come out and say the 12-point plan is a great plan and they have optimism, these are things we've been talking about, and other people are saying the same thing, great. If that is how you truly feel, then you should come meet with Director Sanchagrin and have the other members of the system come and meet and talk about where we're at, can we just have an honest discussion about how we got here a little bit, and then talk about what we can do going forward. Because they have faith in Director Sanchagrin as do I, and I believe that he is going to help this situation. So, that's one of my proposals I'm asking you to consider. Because as I started with at the beginning, when these meetings happen, that's not what happens. And so, I believe there's an opportunity now to have dialogue with these significant policy makers, governor's office, legislators, OJD, prosecutors, and law enforcement because they play a role too, and have them come together and talk about what can we do collaboratively, collectively, what are some good ideas that require everybody in the room to work on to get better. Because the ideas they generally say is bash OPDC and give the providers, oftentimes, unfortunately, is give the providers more money. And I'm very happy, and I want to put this on the record, I am extremely happy with House Bill 1531 and the budget that at least made it through the public subcommittee. And I am happy in that I believe it shows...

Chair Jennifer Nash: Well, that makes one of you.

Carl Macpherson: I understand, but at a time when we've talked about cuts and cuts and cuts, and OPDC is not getting any more money, the fact that there is investments in the agency and public defense, I very much appreciate it. The fact that I believe the

budget shows the need for both short- and long-term solutions, which means retention of your full-time providers, the legal clinics, which are critically important to that, I mean, that is a positive. So, I believe there's some momentum there with individuals that we think have some long-term success.

Chair Jennifer Nash: So, you were in those meetings, the workgroup that was convened to get all the system partners together to try to have those discussions, and I think it's fair to say that your summary of what happens in those meetings is, or in the system is also what happened in those meetings, where it wasn't let's sit down and have a collaborative discussion about what we can do, it's a let's figure out what OPDC can do that they're not already doing because they're not doing a good job. So, how would you suggest, from a practical standpoint, of changing the narrative so that that's not the discussion that continues to happen?

Carl Macpherson: I do think it's providing more data and research, and there are times that we could do better with data and research, as a starting point. I do believe the data and research also needs to come from the providers, and it's challenging for us. It is a nationwide problem that public defenders are under-resourced, and data research is not generally what we're resourced to do or where resources are actually applied. But can we do better with not just anecdotal evidence of late dismissals and late discovery disclosure and high acquittal rates? MPD, I don't have the data, but my guess would be MPD tries more cases in the state than any other entity by a pretty significant margin. And in the last 10 days or so, business days, we've had, I believe, five acquittals in five different trials. And in one of those trials, it's downright offensive that that case went to trial. A man who was seeking mental health help on the side of the road was then beaten by a police officer, was ultimately charged with resisting and obstruction by a police officer, and we had to go to trial to defend him. And he was acquitted. So, anecdotes are helpful, but I do think we can do a better job with that so that hopefully the system understands that there's more that can be done, particularly on discovery, particularly on late dismissals, particularly on overcharging and charging decisions that shouldn't be made. Also, [Inaudible 01:14:53] solutions, we as a state have very few diversionary options. I'm sorry, but it's just true.

Chair Jennifer Nash: Yeah.

Carl Macpherson: And the pushback from prosecutors when I say this is, well, you just want more cases dismissed, and you're politicizing this. No, I'm not. What I'm saying is, based on being a public defender for 27 years, and you have other states that have diversionary programs that are not punitive and are rehabilitative, and allow people to accept responsibility early on in a case and earn a dismissal is a positive for the victim, it's a positive for the client, the defendant, and it's a positive for the system overall. And it's best for short-term and long-term public

safety. So, I want to be really clear on that. So, those are some options. The last thing I think that is important that is not discussed, and at least needs to be touched upon, are preliminary examinations.

If you look at time of dismissals in other states, and you compare our prelim state with a grand jury state, you have a significantly better time to dismissals in preliminary examination states, but more importantly, you don't have the backlogged, back-loaded system we have in Oregon, where everything gets set for trial. And it's funny because then the judge is like, "Well, MPD takes all these cases to trial, you're sending everything to trial." Well, yes because we don't have discovery yet, our client's entitled to us to review discovery, in fact, it's our ethical obligation to do so, and they have that right and ethical responsibility to them to investigate their case, talk to them about their case. This isn't McDonald's where we're processing people. So, a preliminary examination state also leads out the charges that should never have made it through a grand jury.

But when the state is able to go to a grand jury in private, in secret, and present limited evidence, I mean, law professors, we have Commissioner Lininger, I know, I remember hearing in law school, you could indict a ham sandwich, was the comment, through a grand jury process. The preliminary examination process weeds out cases early on, and you don't have that backlogged system, and it's not just your trial rate because people will say that. There's an article that talks about there's low trial rates nationwide. Okay, that's fine. It's your preparation time. So, it's not just the case that you go to trial on, it's the fact that [Inaudible 01:17:15] all these cases to trial and having them dismissed at the last minute, which is exhausting and demoralizing, and not being consistent.

Susan Mandiberg: So, it used to be... I don't know the history of when things shifted in Oregon, and this is ancient history, but in the '70s, most felonies had preliminary hearings. Almost no cases went to the grand jury. That was saved for either really serious cases, at least in Multnomah County, really serious cases, or cases where, for some reason, the prosecutors felt like they needed to protect witnesses from being cross-examined, which happens at a preliminary hearing. And I don't know when the shift occurred, and it would be interesting if there was some way to come up with statistics about caseloads, which I'm sure we can't do, but number of cases that went to trial versus number of cases that didn't. There may be a way in the court system to come up with statistics and figure out historically what an impact that shift made. My guess is that the shift happened sometime in the '80s.

Chair Jennifer Nash: Yeah, that's what I think, too.

Susan Mandiberg: Yeah.

Chair Jennifer Nash: Yeah. We have a lot of practitioners who've been around for a while who can probably answer that in the audience.

Rob Harris: I suspect Judge Lipscomb may have a better idea than I do. But I do know that there was a case where Oregon could do both prelims or grand juries, and there was a case that said you have to be consistent and have an adopted policy...

[Crosstalk 01:19:03]

Susan Mandiberg: Right, there was a...

Rob Harris: ...you choose which to go. Most counties didn't want to do that, so they started doing grand juries. Washington County did adopt a policy, as you know, Alex and Carl, very well. And the downside of that, as you know very well, the offers come in, it's way prelim, if you want to keep discussing your case.

Susan Mandiberg: Right.

Rob Harris: And so, I'm not sure if prelims are the absolute. Maybe there's rules you can put in place that would address that particular problem, but that's almost the worst-case scenario in some cases because you get these offers from Washington County, way prelim, and we will keep talking to you and go, "Gosh, I don't have... Should I waive prelim?" I don't know. I do want to get an offer. It's a misdemeanor offer, for instance. So, it does have the adverse consequences, too, I would say. But, again, there might be rules in place you could use. Maybe Judge Lipscomb has a better history, recollection than I do, on the reason for the bifurcation.

Paul Lipscomb: I didn't have much contact with the criminal justice system as a young lawyer. I did, right off in the beginning, take some court-appointed cases. But as soon as I found out how lawyers back in the late '70s, early '80s, were treated by the court system in terms of fees. At that point, the judge determined the fees, and it was often \$50, depending on, regardless of how much time you had in the case. So, I did, I think, two cases and took my name off the list. My next contact with the criminal justice system wasn't until I ran for a judicial position and was elected, and I was in district court for, I think, seven years. And so, I wasn't dealing with the big cases, I was dealing with the little cases.

And my experience at that level, and I haven't had much since, but my experience at that level with criminal law was that most misdemeanor defendants come into court anxious to get their case resolved and they don't really care so much how it's resolved. They need it resolved so that they don't miss work three to four times in the following two months because they're going to lose their job and they have a family to support. They just want it over

with. And my own view on these misdemeanor cases is that the bulk of them could be handled as violations and resolved on a first court appearance. And that's my take on the system. I don't have the background that the rest of you guys do, and I respect what I hear from those of you who are practicing regularly in this area, but I know there's a lot of low-hanging fruit out there. And if the district attorneys don't want to play nicely in one jurisdiction or another, I think the court needs to take control of it and reduce cases to violation at the first appearance if the defendant wants to plead guilty and get down the road. That's my opinion.

Chair Jennifer Nash: That's why we posed our third question. How would public defense court be different in your county? Do you think judges would do that? Because, I mean, there are some counties where I don't think judges would do that, but I think there's a lot of counties where they would. All right. Well, thank you, Mr. Macpherson.

Carl Macpherson: If I could just say...

Chair Jennifer Nash: Oh, yes.

Carl Macpherson: Thank you for giving me the opportunity to talk. I've dedicated 27 years is because I care deeply about our clients.

Paul Lipscomb: Can you speak up?

Carl Macpherson: Yeah.

Paul Lipscomb: We don't have microphones here, and it's really hard to hear you guys.

Carl Macpherson: Sure. I just want to say thank you for giving me the opportunity to give feedback. I've been doing this for 27 years because I believe so strongly in our clients and that they deserve ethical and effective representation. I know that the commission and your policies have talked about ethical and effective representation, I greatly appreciate it. I just ask you and encourage you that even despite the pushback and despite what you hear, to please keep pushing because that's what we have to do. As public defenders, we hear every single day on the ground. So, if we didn't push back and continue to show up to work, where would we be at now? And we're going to continue to do so. So, thank you very much.

Rob Harris: Thank you for your remarks, Mr. Macpherson. Thank you.

Chair Jennifer Nash: Thank you.

Tom Lininger: Thank you.

Chair Jennifer Nash: All right. Tristen Edwards.

Tristen Edwards: Good morning, Chair Nash, Director Sanchagrin, and members of the commission. My name is Tristen Edwards, and I've been an attorney at MPD since 2017. I represent clients in major felony cases and have a partially grant-funded position that allows me to also work on issues of policy, specifically related to promoting the use of restorative justice as an alternative to prosecution. Restorative justice is a non-carceral community-based approach to harm that is grounded in Indigenous practices. Restorative justice centers the needs of harmed parties, otherwise referred to as victims or alleged victims in our criminal system and promotes healing and accountability through the use of community support and facilitated dialogue. National studies, as well as early data from programs operating in Oregon, demonstrate lower rates of recidivism when compared to the criminal legal system, as well as high rates of survivor satisfaction and long-term cost savings to the state.

In 2021, the Oregon Legislature created the Criminal Justice Commission's Restorative Justice Grant Program with leadership from our own Director Sanchagrin. The Restorative Justice Grant Program provides funding for community-based restorative justice programs that divert cases from the criminal legal system. This funding has led to the development and growth of restorative justice programs in Multnomah, Lane, Jackson, Deschutes, Hood River, and Wasco counties, with additional programs developing in Washington, Clackamas, and Benton counties. Restorative justice programs exist as an incredible tool for addressing cases outside of the system. Many of the programs that I mentioned refer cases to restorative justice before charges have been filed or seek to route cases into restorative justice soon after charges have been filed. Expanding the use of restorative justice is an effective way of reducing the need for defense attorneys, while promoting public safety, providing genuine attention to the needs of crime survivors, and avoiding the harmful and often counterproductive impacts of incarceration. The Oregon Public Defense Commission can help promote the use of restorative justice as an alternative to prosecution, and an approach to addressing the unrepresented crisis by doing three things that I've been able to come up with but would love to chat more about other ways.

First, the OPDC could encourage counties most impacted by the unrepresented crisis to collaborate with their local restorative justice program and identify a process for moving cases from the unrepresented list and enrolling them into restorative justice. Second, OPDC could help advocate for funding for the Criminal Justice Commission's Restorative Justice Grant Program. We were recently awarded \$4 million for the next biennium, which is about half of what

we need in order to be able to promote all the programs in the state. The OPDC could also collaborate with the Restorative Justice Coalition of Oregon to develop long-term strategies for increasing use of restorative justice as an alternative to prosecution to effectuate broader system change.

I would like to conclude my statement with an example of the impact that restorative justice can have. The Restorative Roots Project is a restorative justice program in Multnomah County. They've handled cases ranging from person misdemeanors to class C felonies to Ballot Measure 11 offenses. In 2023, they enrolled a case where the responsible party, otherwise known as a public defense client, was charged with assault in the second degree for hitting a rapid response worker over the head with a piece of marble. After being accepted into the Restorative Roots Project, her case was dismissed from the system, and she began working with restorative justice facilitators. When she started in the program, she had been homeless and addicted to meth for almost a decade. Today, she's over two years sober. She has stable housing. She reconnected with her mother and her daughter. Rapid Response participated in a restorative community conference and ended up offering her a job as part of their repair plan. Since working at Rapid Response, she has received promotions and accolades. She is also an active member of Narcotics Anonymous, and this is particularly important because the person who was directly harmed in her case was not able to participate in the restorative process due to their own substance use disorder and relapse. I heard from the Restorative Roots Project that a little over a month ago, this harmed party reached out to the woman in this case and asked for her to become their sponsor.

Restorative justice is about more than criminal diversion. It is about repairing relationships and creating strong communities. It is about abandoning punitive approaches to harm and shifting to an approach that actually addresses the underlying drivers of criminal behavior and is attentive to the dignity of all of the parties involved. Because of the Restorative Justice Grant Program, there are programs across the state that are ready and willing to take cases off of the unrepresented list now, and I am happy to facilitate conversations with these programs or answer any questions that the commission may have.

Brook Reinhard: Thank you.

Chair Jennifer Nash: Yes, thank you. Does anyone have any questions?

Susan Mandiberg: No, I just want to say I'm so glad somebody's doing this.

Tristen Edwards: We can do it together.

- Susan Mandiberg: We could do it together. That would be a good thing to explore, I agree with you.
- Rob Harris: I do have a question [Inaudible 01:29:11]. There's a lot of partners that work in restorative justice, right? Not just the defense attorney.
- Tristen Edwards: So, yes. In terms of doing a diversion from the system, it requires the consent of the district attorney's office. And we do have district attorney's offices that are connected with restorative justice programs across the state, and I think that there needs to be motivation to those district attorney's offices to fully utilize these programs and really be referring cases in a meaningful way.
- Rob Harris: Do you know what the major funding channels are for restorative justice programs outside of what OPDC may provide?
- Tristen Edwards: The single funding source for these restorative justice programs is the Criminal Justice Commission's Restorative Justice Grant Program. It was developed in 2021. The first grant awards were made in 2022. One of the issues that we have had is that the amount of money that has been allocated to that program has not increased since its pilot year. During the pilot year, the Restorative Justice Grant Program gave grants to seven different programs. Many of them were in their pilot stage or in a planning stage. Today, we have doubled the number of program applicants, but the pot of money has not increased.
- Chair Jennifer Nash: So, who does that money go to? Like what entities? Yeah.
- Tristen Edwards: Yeah. It goes to community-based restorative justice programs. Many of these programs are run through dispute resolution centers that also offer mediation services. And some of these programs are brand new because there has been a lot of interest in people who have done consulting in restorative justice or gone through the University of Oregon's conflict resolution program and are interested. And so, there are even some new nonprofits that formed, but their sole source of funding is the Restorative Justice Grant Program, and there's instability in that funding because it is historically, to date, been one-time funding allocations. There was one year, the second year, that it sought to be renewed where it was not renewed, and the Restorative Justice Coalition of Oregon had to return in the short session to do some last-minute advocacy. And so, having additional political support and demonstrating that there is a clear intersection with the unrepresented crisis and encouraging systems and counties to also acknowledge that intersection and meaningfully report cases, I think would also go a really long way in stabilizing the funding and being able to grow this resource.

Susan Mandiberg: I do have a question. What the criminal justice system calls the defendant, restorative justice calls the responsible party. Is there another name for what the criminal justice system labels as victim?

Tristen Edwards: The restorative justice? Oh.

Susan Mandiberg: Criminal justice calls somebody a victim. Is there another name that restorative justice uses for that?

Tristen Edwards: Yeah. Yes, sorry, so restorative justice just seems to use more person-forward language. We will generally say the harmed party.

Susan Mandiberg: Okay, so the harmed party. If you're trying to set up, if a defense attorney, I don't know if you have another name for that, [Laughter] if a defense attorney is trying to set up a restorative justice situation, and as Rob points out, you have to have the cooperation of the district attorney, what role does the harmed party play in that? Does the harmed party need to go along with the program?

Tristen Edwards: Yeah, so it depends. It differs across counties. There are some counties that do not require the consent of the harmed party. Other counties, like in Multnomah County, require the harmed party consent to consent to the process. That being said, the whole point of restorative justice is that it is centered around the need of the person that's harmed and gives them agency and allows them to dictate what their healing process looks like. And so, their actual engagement in the process can range from receiving the same level of services as the responsible party, following through, having a facilitated dialogue, or if the harmed party says, "Hey, I think that this is a great idea, but I don't want to have anything to do with this, or maybe I want to get a letter and hear about how it's going, but I'm not interested in sitting in that circle."

Generally what happens then is of course that wish is respected, and then the restorative justice program will identify somebody in the community who has experienced a similar harm who can be a part of that process in order to, and we call it a surrogate, in order to effectuate the process.

I will say that I think that there are problems with requiring harmed party consent. One, it bakes uncontrolled bias into the process, and the second thing that we found in Multnomah County is that it can be difficult to reach harmed parties in a timely fashion or get responses. And typically it is a district attorney that is explaining this program, and it's just not the best messenger for explaining something that is very different than our criminal system. And so, I think that it would, especially when we're thinking about unrepresented cases, I think that requiring harmed party engagement or consent is something that can really hold up that process, and what I have proposed to the Multnomah County

District Attorney's Office is that we maintain harmed party, survivor vetoes is what we call it, but allow that to be kind of an opt-out. So, we make efforts to contact the harmed party. If we get in touch with them, and they say, "I really don't want this to go through restorative justice," okay, that wish is respected. If we make a month of effort to try and reach out to the harmed party and we just can't get ahold of that person, then we've done our due diligence to get their input, and we move forward with the restorative process. That has been my proposal.

Susan Mandiberg: So, I just want to find out a little bit more on these lines. So, if a prosecutor's office has an active victim's rights section, I assume those people would get involved in this in some way.

Tristen Edwards: You mean like a victim's advocate?

Susan Mandiberg: Yeah.

Tristen Edwards: Honestly, I think that that would be a good idea. That is not the practice that I have seen in Multnomah County. I have seen that play a role in the counties in the Gorge, and I do think that that is a good way, having a victim's advocate within the district attorney's office, training up that person to understand really what it means to engage in a restorative justice process, and giving survivors of harm the full information. The best practice for how to communicate with a harmed party about the restorative justice option is for a district attorney's office to simply seek their consent to pass on their contact information to the restorative justice program, to be able to speak directly with the restorative justice program. That creates several steps in the process. I think also cutting down on the number of steps that require the harmed party contact is an important part of expediting cases to get into the restorative justice program. So, I agree with you that kind of wrestling with this issue of how is the harmed party involved, what does that contact look like, and how can we lessen the burden on the district attorney's office, on the public defense office, but also on the harmed party themselves is an important part of that dialogue.

Susan Mandiberg: So, when we're taking Carl's suggestion to come up with a dialogue that's more productive, one part of that dialogue could be discussing with district attorney offices how to incorporate restorative justice and how to organize their offices to make it work so that they can still pursue the interests of the harmed parties and not feel like they're letting down the law and order sort of goals that they advocate. So, I think that's a really interesting topic for us to pursue. Thank you for that.

Chair Jennifer Nash: I have a question. How would you propose developing a universal criteria for determining what cases statewide on the unrepresented list would be appropriate for a look into the restorative justice path?

Tristen Edwards: So, I mean, the reality is restorative justice is an appropriate approach for a wide range of harms. Typically the best kind of cases that are suited for restorative justice are cases where there is an identifiable person harmed. So, somebody who's a victim of a stolen vehicle. I know that there are a lot of [Inaudible 01:37:59] cases that are on the unrepresented list in Multnomah County. That being said, even cases where there's a community harm like felony possession of a firearm, delivery of controlled substances.

Chair Jennifer Nash: Let me stop you. I'm sorry. I agree with you. You're answering a question probably that I asked but that I didn't mean to ask.

Tristen Edwards: Okay.

Chair Jennifer Nash: I mean what's the process for developing... What do you suggest is the process for developing that criteria statewide? Who would you want at the table and how would you go about trying to develop that so each county could say, "Okay, here's what we've agreed on." How are we going to do this?

Tristen Edwards: So, I think that district attorneys have to be at the table. Being able to take cases from the system and put them into restorative justice relies on the buy-in from a district attorney's office. I think having judges at the table is also a great way to just encourage accountability. I have found that when it is just a public defense attorney and a prosecutor, it is very easy for there to be no follow-up, for months to pass, weeks to pass without any input or any engagement. And if there are outside actors who also have a stake in this, and who are encouraging this along, I think that that can be really helpful. I think, of course, OPDC and perhaps OCDLA having a seat at that table as well is a great idea. I do wonder about the ability to create a uniform criteria on a statewide level and whether it might be more beneficial to focus on the counties where there is a high number of people on the unrepresented list where there is an active restorative justice program and talk about capacity and talk about what works within those programs.

I met with all of the programs in Multnomah County yesterday. There are three active programs. They let me know that they think that every one of those programs could take 10 to 20 cases off the unrepresented list right now. Now capacity is kind of a question mark because these are new programs, and we have had challenges getting case referrals. And so, taking that many cases would be new for us, but it is something that these programs want. And some cases take longer than others. We had a civil compromise UUP case that

recently went through a very successful restorative process that took less than two months. Now that's not going to be the case every time, but you are going to be able to take some cases and resolve them relatively quickly through a restorative justice process.

Chair Jennifer Nash: Thank you. That's really helpful. I appreciate that. Any other questions before we...? Go ahead.

Rob Harris: It looks like it was started, though, in 2021, this program.

Tristen Edwards: That's correct.

Rob Harris: The original grant. Has the grant dollars gone up over the last four years and have any of those grant fundings not been claimed? So, did you not have enough programs? Was there more money than there were programs? Was there more qualified program proposals than there was funding?

Tristen Edwards: We have not had the experience of having too much funding. If that [Inaudible 01:41:10] problem. At best there has been maybe like five to ten thousand dollars that have gone unclaimed in a biennium because we didn't do another round of grant applications. The need is there. Our issue, and the funding history is a little bit interesting, at least to me who thinks about restorative justice all the time, but in 2021, the allocation was made of \$4 million. It took a year to get that funding out the door because we had to go through the process of creating the entire grant, creating the OARs, soliciting applications, things like that. So, from 2022, we actually stretched those dollars to 2024, that 4 million. So, it kind of kicked off the biennium track. That was really important for the survival of the Restorative Justice Grant Program because we got cut from the budget in 2023. So, then we went back in 2024 and felt like we were in a bit of a fight for our lives and advocated for additional funding and \$4 million of one-time funding was included for 2024 to 2025, so it's one year.

So, with that money, what we were able to do is we were able to fund all of the programs that had already been operating, there were seven, and then we were also able to award eight different programs planning grants, the opportunity to work with stakeholders in their community and to think about, envision what would restorative justice look like here. We are now in our third round of grant applications and what we have found is we have \$4 million, likely, I don't want to jinx anything, knock on wood, but \$4 million has passed for the Criminal Justice Commission budget and Public Safety Subcommittee for restorative justice for two years. So, we are back to having \$4 million for a biennium. Now we have seven established programs, we have five planning grant programs that are ready to go with a pilot, and we have three brand-new programs that are applying. And so, we simply will not have the funding to grant awards to all of

those programs and, frankly, we are probably going to be in a situation where we are cutting budgets from the established programs. My hope is that there is more clarity and perhaps a more promising budget for the next session, and we can go back in the interim, and we need help with advocating for funding for these programs.

Rob Harris: My last question for you is what is the impact of a restorative justice program on attorney capacity? Does it take more attorneys? Does it relieve some attorneys? Is it a net zero, it's just a different way? And I know you may not have the data, but do you have an impression on that at least?

Tristen Edwards: Significantly less attorney time.

Rob Harris: Okay. Thank you.

Tristen Edwards: Some of these programs are referring cases pre-charge. The Emerging Adults Program here in Deschutes County has been operating since 2021. They started as a very small pilot shoestring budget and then they were able to expand significantly with the Restorative Justice Grant Program. They refer cases pre-charge. They have public defenders that will give advice to the person up front, "This is the risk you're taking going in restorative justice, this is what the criminal system would look like," and then that case is off their desk and it is into the restorative justice program without ever having hit the court system either. You're not using court time for those cases either. In Multnomah County, the Restorative Roots Project, the way that program is designed is to refer cases pre-grand jury. So, the case is dismissed when it goes into the program. It's intended to happen at an early stage and then the defense attorney is off that case and the only way it's coming back is if it's a failure in the restorative justice program. To date, we have had no failures.

Male: None?

Tristen Edwards: No failures yet.

Rob Harris: Wow.

Tristen Edwards: Sorry, Restorative Roots Project, I'm talking about that program specifically.

Chair Jennifer Nash: Thank you, this has been very, very helpful.

Rob Harris: Thank you. That was great.

Chair Jennifer Nash: Yeah. Really great, thank you. Mr. Hartley.

Grant Hartley: Yeah, I did not sign up for question one. I will say my response to question two is tied to question one, so I'm not sure if the plan was to loop that down.

Chair Jennifer Nash: Well, we're actually out of time, and we knew we might not get to all of the questions, but if you have input on question one, please give it, or your answer to question two that loops into question one. That's fine too.

Grant Hartley: Yeah. I will go right there.

Chair Jennifer Nash: Yeah.

Grant Hartley: And so, just for the record, for those that I have not had the opportunity to meet, thank you, Chair Nash, Director Sanchagrin, and the rest of the commission for keeping us [Inaudible 01:45:44] community to provide some feedback. I have been the director at Metropolitan Public Defender for about three years now. I've been a public defender for over 10 years. All of that time has been spent in Multnomah County. All of that time has been spent at Metropolitan Public Defender. And so, the feedback that I have about the limitations within Multnomah County are not only mine, they are also those of all the attorneys that work in our office. And what I really want to focus on is actually tied to some of the things we've heard, [Inaudible 01:46:19] well, regarding a large contributor that is often overlooked in this crisis and that is the district attorney's office. And I promise I will not just be complaining, though that will be some of this. But I do have some ideas on how the commission can help alleviate this and shed some light on the role that prosecutors play in the unrepresented crisis.

And so, I want to kind of focus on three areas, and that's discovery, charging decisions and case scrutiny, and grand jury. And so, starting with discovery, really, it has been epidemic recently with late discovery. Despite the EA's moving to a new electronic system, which was promised and delivered discovery right after arraignment, we are still regularly getting late discovery the day before trial, the day of trial, in trial. And those cause sometimes dismissals, which seems good, except that the state then can refile now with this evidence that should have been excluded. Or, if it happens prior to trial, it is going to delay the resolution of the case because that case is going to be set over. And that means that an attorney is going to have to continue working on that. It is also just very demoralizing for our client to have to prepare, for our attorneys who have prepared a case all the way up to trial and all of a sudden, have new evidence dropped in our lap right before [Inaudible 01:47:53] with them. And so, that is a primary issue, and we have seen it, while a lot of that has happened in misdemeanors, it has also bled into felonies as well.

In addition to just late discovery, we also have seen a lot of withheld discovery, and this is kind of coming to a head right now around police misconduct records in Multnomah County. There's been a directive in place for the police bureau for three years since 2022 that required them to permanently provide these misconduct records of all the police officers to the DA's office so the DAs can review it and then provide it to defense counsel when those officers were called in a case. And we frankly did not know this directive existed until about January. Turns out nobody really knew this directive existed until about January. And in January we started to litigate it, and we started to win on it. And judges found that these misconduct records are actually in the possession and control of the state because they have direct access to them. Now we are about three months later, and the district attorney's office is pushing PPD to change the policy.

Chair Jennifer Nash: Of course they are.

Grant Hartley: Yeah, to essentially say that PPD should only turn those over once they determine it's a credible allegation. And so, they are asking them to make the determination about allegations against their officers before turning that over. Obviously, that does not comply with Brady. That is an example of something that has been happening throughout the office. And what this means for our attorneys and the unrepresented crisis is that we are having to litigate a ton of unnecessary motions being compelled. Whether it's misconduct records, whether it's evidence that we know that they have that they haven't produced because they haven't been communicating with their officers.

We are regularly going into court having to do motions, having to waste court time, our attorneys' time for evidence that they're clearly entitled to. And I think one of the areas where OPDC, it would be helpful if OJD did more about this. Because what we do not see is we do not see judges reprimanding DAs when this happens. We do not see judges inquiring into the systematic issues within the DA's office that are causing these issues in so many cases. And that is really the only way that this ends. Right? I mean, prosecutors love to talk about deterrents. This is a deterrent. We need judges to actually hold them to account when this happens or it will continue to happen. And so, OPDC raising this issue with OJD and encouraging them to train judges on the remedies that they can use and being creative about remedies. I was talking to a judge yesterday who is equally frustrated with this and talking about how they are trying to think of remedies that they can use to enforce the rules that are already there. And so, that's sort of the first thing around discovery.

The next is around scrutinizing and intake of cases, and this is sort of tied together. We see a lot of cases that are dismissed day of call or day of trial. Call being just [Inaudible 01:51:23] to go to trial. And again, this has increased in recent years. We have a lot of statistics about this that I'm happy to share, but I

think that what's important to know is that it is often seen as a problem with misdemeanors, and it is true that it is most common in misdemeanors. But we are seeing it quite a bit more in felonies now, which makes sense because those DAs that didn't understand how to scrutinize the case, how to meaningfully communicate with the witnesses in that case to ensure they were actually available when they were in misdemeanors, are moving to felonies. And so, those same patterns and practices are continuing with felony cases now. And so, we are seeing felonies regularly get dismissed at call as a result.

And so, I really think there's two things that I think OPDC can do. One is to encourage OJD to pay more attention to this data, to actually audit it, to come up with meaningful processes to ensure that DAs are communicating with their witnesses in advance of not just a call, but weeks in advance. Right after they are charging the case, they actually have a witness that will be showing up at trial and they can prove this case. And the other thing is OPDC has access to all public defense providers. Not all public defense providers, for a variety of reasons that Carl raised earlier, are able to collect the kind of data that MPD is, but OPDC can help facilitate the collection of this data. It can set up reports that people can file when these happen so that we have meaningful data to go to the legislature and to point to that it's not just from one firm that has the ability to [Inaudible 01:53:23].

The final thing is sort of also I'm repeating what Carl said is [Inaudible 01:53:28]. And that is because my previous comment about this affecting felonies is directly tied to grand juries. We are regularly receiving indictments where there are victims named on the indictment, but at the bottom of the indictment, it shows who showed up at grand jury. There's one name, and it is a police officer, and that is because they are relying on invisible hearsay in grand jury all the time. That doesn't just waste our time by taking these cases all the way up to trial, and they clearly cannot prove it because they can't get [Inaudible 01:54:02] in grand jury. It also, it's unlawful. It violates the statute. The statute says that you cannot rely on evidence in grand jury that you cannot present at trial. And despite it being unlawful, we have no remedy, and that's because the grand jury statute does not allow you to move against indictment based on the grand jury report.

And I understand, that was a concession that had to be made to get grand jury reporting, but we are well past that, and we can demonstrate the effect that it has. And so, we should be going to the legislature. This last session in working with Maylead [Phonetic 01:54:43], we were able to put forward a proposal to do just that, to allow defense attorneys to move against indictments. And unsurprisingly, it went nowhere. And that is because it is hard to show this. And that is, again, we're openly seeking comment. You can collect this data, you can compile this data, you can analyze it, and you can help us present to the

legislature to show it. And whether it is getting more teeth in the grand jury statute so that we can move against the indictment or whether it is the prospect of that in order to encourage the use of more preliminary hearings. Either one is going to be better for our system, and it's going to help the unrepresented crisis.

And today, the conversation [Inaudible 01:55:29] I was actually in Multnomah County when grand jury reporting came up, and it was rather funny because the DA's office there threw a bit of a temper tantrum and decided, "Okay, no, fine. You're going to listen to what we're doing in the secret room, and we are now going [Inaudible 01:55:46]." And as soon as they did that, we started to [Inaudible 01:55:52] didn't get those people to grand jury because they didn't show up for preliminary hearing, or we also [Inaudible 01:55:58] grand juries don't know how they're instructing those grand juries because that part's not recorded. Now we have a judge who made a determination of probable cause with proper instruction in the law. And so, I think it lasted about three months. Even after the [Inaudible 01:56:12] three months before they went back to grand jury. And that is because grand jury is a process that is easy on them, despite not being easy on the system or public defenders or our clients. And so, those are the three things I think that are occurring right now in the prosecutor's office that OPDC can really have some impact on through data collection and advocacy.

Chair Jennifer Nash: Thank you very much. Questions or comments?

Susan Mandiberg: Those are great suggestions. Thank you.

Chair Jennifer Nash: Anybody else? I want to just say we knew we might not get through all the questions and indeed we did not. However, the one that was really the big overarching question that we really, really hoped we'd have time for is question one. And we also worried that maybe when people talked about question one, it wouldn't really be on point. And I just want to say I really, really appreciate, the commission really appreciates how each of you came today and really offered very specific, very responsive, very good lawyers, very responsive responses to the question and this has been incredibly helpful and enlightening. And exactly, I think I speak on behalf of everyone what we hoped would happen, and we really want to keep doing this because this is very, very helpful for us, and I'm sure also helpful for you because you feel like you can finally talk with us directly. Yes.

Susan Mandiberg: Let me say that if providers have suggestions for what questions we should be asking, things that we should open up a discussion for in future meetings, please let us know your ideas because we want to discuss what you want to discuss, and it would be helpful to know what that is.

Paul Lipscomb: Do you folks have access to our e-mails? Addresses?

Susan Mandiberg: I think you have access to our OPDC e-mails. Yeah. Not our personal e-mails. And it's better to use the OPDC e-mails, I think.

Chair Jennifer Nash: It is. If you send it to the personal [Inaudible 01:58:27] everything needs to go. You can send a personal but also send it to the other one, or we're going to route it that way because everything needs to be preserved for public record retention.

Rob Harris: I would say for everyone listening, at least copy my personal e-mail.

Chair Jennifer Nash: Yeah, right. [Inaudible 01:58:43].

Rob Harris: Otherwise it may sit in limbo for some weeks.

Susan Mandiberg: The pads we have are clunky. That's the [Inaudible 01:58:50]. [Laughter]

Chair Jennifer Nash: We're not even going to talk about that part because then we'll open up a whole can of worms, and we'll start complaining about everything.

Grant Hartley: If I could very quickly.

Chair Jennifer Nash: Yes.

Grant Hartley: Because we're not going to get to question three. Because I'm on the OCDLA board, [Inaudible 01:59:05]. I was able to help create and advocate for the HB 2469 which was the misdemeanor reduction to violation. I do have a lot of thoughts on that as well as the adjournment in contemplation of dismissal which is another mechanism that is very similar to that. It gives the court discretion to resolve cases without [Inaudible 01:59:34] often without a plea as well. And so, those are very good tools that I think the court wants in its toolbelt to address the unrepresented crisis.

Chair Jennifer Nash: So, I think that's a very good point, and I think that's a question we really do want to gather some information about. So, I think a good plan because we don't have the time to do it today is to carry that over to July and make that a question that we'll engage with in July. So, appreciate that very much. Thank you again for your participation. I hope other people found this as helpful as we found it. And thank you. All right. And with that, we'll take a quick break.

Rob Harris: Chair, can I make one comment?

Chair Jennifer Nash: Oh, yeah. Go ahead.

Rob Harris: Thank you. And thanks for the really great representation by MPD here today. I really wish lawyers from other crisis counties had taken this opportunity to show up and explain their issues and problems and solutions because we need all of us. We need to crowdsource this quite a bit. And while certainly, I don't even see anybody from Washington County. My home county. I guess I'm from Washington County. But it's one of the...

Chair Jennifer Nash: Carl.

Rob Harris: Carl. Well, Carl.

[Laughter]

Rob Harris: I consider you [Inaudible 02:00:48].

[Laughter]

Rob Harris: But yeah, thank you for that. I know you guys have...Grant also has some familiarity with Washington County. I appreciate that. But I really encourage those listening and lurking out here, and I know a lot of people are interested in this, to actually come and actively participate and help us make these solutions. Thank you.

Chair Jennifer Nash: All right. We'll take a break until 11:20, just a little bit longer break.

[Background chatter]

[No dialogue]

Chair Jennifer Nash: It's 11:21. Rob, Susan.

[No dialogue]

Chair Jennifer Nash: Ken, is it okay if we take Judge Raschio?

Ken Sanchagrin: Oh, sure. Yes, please. Yeah.

Chair Jennifer Nash: I agree. It's going to be very difficult...

[Crosstalk 02:21:17]

Male: Yeah.

Chair Jennifer Nash: it's going to be very difficult to call you Judge, Judge.

[Laughter]

Chair Jennifer Nash: Oh, we can't hear you. Can you...

Male: Are we unmuted?

Chair Jennifer Nash: He's unmuted. Now we can't hear you.

Male: Pay your bill.

[Laughter]

Chair Jennifer Nash: Okay. You're actually up for 11:30, so you can work on your audio, and I'll have the director give his director's report. Sorry about that. I was going to call you [Inaudible 02:21:55] but you've lost all your opportunity.

[Laughter]

Chair Jennifer Nash: All right. Are we back recording, Mara?

Mara Hoaglin: Yes.

Chair Jennifer Nash: Okay. All right. We will...

Robert Raschio: Can you hear me?
R:Oh. Now we can hear you.

Robert Raschio: Okay. I just have to... I have like three different selections of what mic I'm supposed to be using and being not competent with tech, I always have the wrong one on at first.

Chair Jennifer Nash: All right. Well, we will...

[Crosstalk 02:22:20]

Chair Jennifer Nash: We will hear from you, our friend, presiding judge, Robert Raschio from Grant and Harney County, a former fellow public defender well known to all of us.

Robert Raschio: I see my former professor, Professor Lininger here too. So, now I'm doubly nervous. I hear the laughter in the room, and I do find myself at times missing the camaraderie of the OCDLA and the defense bar. I spent what I hope to be

over half of my career, assuming college doesn't cost me as much as I think it's going to, being a public defender, and I am so grateful for that time. I'm so grateful for the work that all of our defenders do around this state and ensuring the enforcement of our social compact, making sure that our constitution is protected, that our society's protected, that our most vulnerable are given a voice. And I am grateful for the work that all of you are doing in very difficult times as a board to help guide the agency in making decisions that ensure the best and highest quality of defense is happening around the state.

I'm a very small piece of your puzzle. We have not had an indigent defense crisis in Grant and Harney County. We had a moment where we had seven unrepresented. It was significant for us, right? Seven people is a significant hit for us, but we do not struggle with the crisis and we're hopeful that we don't have to. I just wanted to come today and answer any questions you all might have. I don't want to take up a bunch of your time. I know you have more pressing issues. I just want to make a couple of notes about indigent defense in rural Oregon. Your defenders spend a great deal of time on the road. When you think about Harney County, for example, the ninth largest landmass county in the country, it's 10,000 square miles. So, when you have a person who doesn't have a vehicle stuck in French Glen, Oregon, and you've got an attorney coming from Canyon City because they're the conflict provider for the county, they're driving well over 200 miles one way to get to that client to investigate that case and to understand the facts and the area surrounding them.

To get between courthouses, if they're a conflict provider and Burns is coming up to John Day, they're up to Canyon City, they're driving 70 miles one way and then another 70 miles back that same day, often five to six months out of the year on snow and ice. We do a lot of remote proceedings, but you do have to travel from time to time, right? If you're extending yourself out to other counties, which we often do in these small communities, the defenders are going to Malheur County, they're going to Baker County, they're going to Union County. We're talking round trips of over 200 miles almost every single time. And so, they spend a lot of time on the road. So, when you start to apply standards, caseload standards, it's important to consider the fact that a case doesn't reflect the same way in rural Oregon as it does in larger communities where populations are more compacted together. There's a lot of time involved in being on the road and representing human beings.

The other thing I would note is you have in your MAC utilization notes from the data just this last month that Steam Mountain Defenders, which is John Lamborn's firm and Burns is 129% of MAC. And Strawberry Mountain Law up in Canyon City, Katie Dunn's firm, is at 86% of MAC. And what you should note there is the fact that Mr. Lamborn has himself and one other associate, and Ms. Dunn has herself and two other associates. And so, you end up having a huge

disparity of 40% because you add in one attorney. And frankly, having three attorneys in each county is probably the best utilization of resources for OPDC. It makes sure that attorneys can actually take vacation because that is helpful that they have an opportunity to get away. It also means that when you have attorneys leave the firm, and I'll tell you, retaining...

First of all, recruiting and then retaining attorneys is very hard in Eastern Oregon. For those of you who don't know me, I started in Canyon City back in 2001. I went to Burns and practiced there for four and a half years. I spent seven and a half years as a defender up in the Dalles and then returned to be your primary contractor in Canyon City. I also then ran the consortium for Baker County, starting a small public defender's office there where we could recruit young lawyers to come work there for purposes of gaining access to work-based student loan relief. I don't think that's a necessary component anymore since there's been some changes in the rules that allows primary contractors to get that relief if they're doing a majority of their work doing indigent defense. But at the time, it was a necessary component to make sure student loan relief was available to young defenders. You still contract with each of those agencies, Strawberry Mountain Law, Elkhorn Public Defenders, and EcoCap Consortium were all organizations that I started in 2014 before I went onto the bench in 2021. I think having three lawyers at each place allows you to utilize and make sure that you have coverage for when a lawyer leaves. What I learned is hard to recruit attorneys out here. It's a place where, I'll just say, it isn't a vigorous dating scene in Canyon City and Burns.

I met my wife on a blind date in Burns. Don't get me wrong, there's some high-quality people here to meet, but it's still a hard place to meet people. And when you're young and you're starting a career, you also are thinking about those next steps in life, the family life, the owning a home. And people don't tend to stay here for but about three years. If I could get three years out of a lawyer, I thought that was great. But when that lawyer leaves and you only have one lawyer left, it puts a huge burden on the person who's running that firm to keep the firm going until the next lawyer can come in. Two lawyers, you can absorb the hit for a period of time as you're recruiting young lawyers. And as we also know, young lawyers working with young lawyers is how young lawyers learn the most about the law. They can turn to their mentors, they can get help from older attorneys to develop their skills, but ultimately, it's that communication and work with their peers where they can be vulnerable and have some of these hard discussions about what the law means, where they learn the most. And it's important to have that opportunity in small communities as you have them in larger communities like Lane County and Multnomah County.

And so, I just want to encourage the agency as it's thinking through these questions not to be overly focused on MAC utilization for this community and

for this area, but more focused on what provides the necessary services to make public defense work now and into the future. What allows us to develop the skills of young lawyers, what allows us to have consistency in representation and give the ability for attorneys to have some humanity in their lives so they're not working 60, 70 hours a week. And I appreciate how difficult this is in terms of all the other things you're dealing with. We're a small little piece of the pie. But I appreciate the opportunity to come speak to you today about that particular issue and would open myself up, of course, Chair Nash, to any questions the board might have about representation out here in Eastern Oregon. And I say hello to all my old colleagues, and I hope you have a great time at the annual conference.

Chair Jennifer Nash: Thank you. Does anyone have any questions? Doesn't look like it. I really appreciate your comments. Very helpful. We have, you may or may not know, we have a new Trial Support and Development manager who used to be a public defender in Oregon and then left and did some – if you watched the prior commission meetings, you know this – left and did some work for the federal government in the Pentagon, right? The Department of Defense. And then came back and he is sitting here because he's going to present soon. And so, you were talking about the need for a number of bodies as opposed to MAC utilization, I know, is probably very helpful information for him to be thinking about, about how rural Oregon is different than the other parts of Oregon, especially the travel part.

I was just thinking when you were talking about how I wonder if, and I'm obviously talking and thinking out loud, wonder if it doesn't make sense in those rural counties to incorporate travel as part of the idea of time when you think about MAC utilization, which would be different than somebody in Multnomah County or somebody in Lane County who's just traveling by foot to the courthouse as opposed to using your car and having to drive hours at a time for court appearances and then wait for court appearances. So, all that information is very helpful and things that we, if we don't practice in that area, don't really know or don't really think about. So, thank you. And I see that Commissioner Lininger has his hand up.

Tom Lininger: Oh, I think Commissioner Reinhard had a hand up before I did.

Brook Reinhard: We both did. Go for it, then I will go.

Tom Lininger: Well, thanks very much, Judge Raschio, for your presentation. And you're bringing glory to your alma mater with all your important work.

Robert Raschio: Glory, yes.

[Laughter]

Tom Lininger: I'd be interested in your insights about what the OPDC might do to incentivize more people to go to Eastern Oregon. I know you've either practiced or been a judge in several Eastern Oregon counties. And short of perhaps organizing some mixers or otherwise helping with the dating scene out there that you mentioned. For example, I don't know if the supervised practice pathway is as viable in less populous counties. I'd be interested in your insights about that. I assume you're familiar with the supervised practice pathway. We've been hearing that that's been useful in some more populous counties. I'd be curious about your thoughts either about SPPE or other ways we can incentivize lawyers to go out East.

Robert Raschio: Well, thank you. Thank you, Commissioner. I still remember your class and it was a challenge, but also, I learned a lot in criminal procedure, which still helps me today. The answer to your question is the supervised practice path is something that's being utilized in Eastern Oregon, specifically in Burns. We have one of the associates, the other associate here is on that supervised path. I think it's an interesting program and certainly a way in which to recruit young lawyers. I think there's an ability to focus your practice skills in a smaller community that maybe you don't get in larger communities because you're appearing in front of the same group of people who can give you additional insight into how well you're doing and what areas you need to improve upon. If you're appearing in front of 15 different judges in a week, you're going to get 15 varied ideas of what works. And if you're appearing in front of one judge consistently, that judge can start to pick up on cues of things that you do really well and things that maybe that you will need to work on and improve upon.

And so, we're more than happy to support that program in Eastern Oregon. We think it's a wonderful place for people to be directed to, to gain the skills necessary to gain a formal license with the Oregon State Bar. So, we think it's a great way to utilize it. The other thing that we have struggles with is housing out here. I know it's true throughout the state, we're way behind, but housing out here is a really difficult problem. And I don't know if there's a solution in the offing from through this organization to work on that, but it's something we definitely struggle with is where do people live. And the cost of rent, there's an assumption always that the cost of living is much lower in Eastern Oregon, and it is lower, but the rent is still fairly high. And the travel expenses and the wear and tear on your car is high. There's a lot of really large expenses out here. I've heard talk of trying to reduce rates for people in rural Oregon. We have plenty of costs that are different, but significant from those people in urban areas. And so, keeping compensation competitive is going to be super important in terms of attracting people out here.

It's a huge commitment for the person running these firms to get out and recruit. The last associate I got was Katie Dunn, which was just lucky. And lucky plays a big role in what we do out here. And the associate before that, I called up to the public defender's office in Umatilla County, said, "I saw you just had a recruitment opportunity. Who was your second choice?" And then I called up that second choice and recruited him to come down and work for me, and he was an excellent associate. And so, it just takes a lot of time and effort and paying very close attention to what's happening in the marketplace to bring people here. And that has to be, I think, incorporated into your thinking around contracting in Eastern Oregon is what are these people doing every day to try to bring talent out here to work, to work. And that is a huge time commitment for directors.

Chair Jennifer Nash: Commissioner Reinhard.

Brook Reinhard: Judge Raschio, thank you for your presentation today. I just had a quick question for you. One of the things the commission has been talking about a little bit, and it's one of the things that I think providers have said before as well, is it would be really helpful from provider point of view and OPDC point of view if defendants charged with misdemeanors could receive violation treatment without the acquiescence of the prosecutor. In other words, it would be discretionary for the judge the same way that treating a felony as a misdemeanor is discretionary by the court. Do you think that would help resolve cases in your courtroom? Or do you think there are any negatives to that?

Robert Raschio: Well, you've had to listen to me speak for way many more hours than most of these people being on the board with me for all those years, but I would say this, I don't know how a judge exercises that discretion, Commissioner, without knowing more about the facts. Judges get almost everything brought to them cold. We know what the charging instrument is, right? But we don't really have any understanding of what the facts are. And if we're making those discretionary calls, it would likely be for most judges, my experience has been that they're going to need to know a lot more about the facts than they do at the point that they're taking an entry of plea. Which means you're maybe not developing an opportunity for a time savings. But in fact, judges who are willing to do that, you're probably talking about fairly extensive briefing or potentially trial before a judge could make that decision. And so, I don't know how the discretion can be exercised in a way that would make sense for a judge. And ultimately, I think that we also live in a place and time where judges are allowed to be bumped by parties with just a simple affidavit. And if judges in Eastern Oregon started going off and reducing everything over a district attorney's objection to the reduction, they're probably going to find their way on the road. And I don't think that that, unless there's changes in that particular portion of

the law, it's highly unlikely that that's a policy that will prove particularly effective.

Brook Reinhard: Thank you for that. I really appreciate it.

Chair Jennifer Nash: Very helpful information. Oftentimes we think about solutions to things, and we know that you push on one thing and that something else happens that maybe you don't think about. And that is, from your perspective as a judge and what that would look like, as you were talking, I was thinking, "Well, that's a good point. I hadn't thought about that. Oh, that's a good point, too. I hadn't thought about that." Those are very, very helpful comments to really think those issues through. Thank you. Anyone else have any questions or comments? No. All right. Well, thank you again. We're sorry you're not here, even... Not even, but in your judicial capacity.

Robert Raschio: Nobody wants the judge at a party, Chair Nash. I know that.

[Laughter]

Robert Raschio: Thank you for allowing me this opportunity to speak to you. And I'm always happy to see you and the other commissioners. Keep up your good work.

Chair Jennifer Nash: You as well. Thank you. Thank you for [Distortion 02:41:36].

Robert Raschio: Thank you. Bye-bye.

Chair Jennifer Nash: All right. Then moving on to the director's update.

Ken Sanchagrin: Thank you, Chair, we just have two quick slides [Inaudible 02:41:47] first one there. So, first, we have some upcoming dates and events, but I do want to flag the last two for you. First, we have our Rules Advisory Committee meeting. That should be the meeting that provides folks with what their expectations should be if you are participating in the Rules Advisory Committee coming up on Wednesday of next week. We also have a Legislative Subcommittee meeting on Friday at the end of the month. The two that I wanted to flag are the Governance Subcommittee meeting and the commission workgroup meeting. They're both planned for July 3rd. And so, we have done some outreach to the commission, but we'd like to make sure that we know that we can get a robust number of folks to those meetings, given that it's a Thursday. And Friday, at least for a lot of folks, is a holiday. So, a lot of folks will begin their travel beforehand. But Mara had sent out some questions about that, and we'll follow up with that again to make sure that that is a date that works for everybody.

Chair Jennifer Nash: I missed that email. Thank you for flagging that because that will not work. I can just say, I would say for probably everyone, Thursday, July 3rd. So, we'll probably move the commission workgroup meeting.

Ken Sanchagrin: [Inaudible 02:42:54]. Thank you.

Susan Mandiberg: And the Governance Subcommittee meeting, we still may not be ready to address the issue [Inaudible 02:43:00].

Female: Thank you.

Ken Sanchagrin: And then the other slide that I have is just kind of a basic briefing on the rollout of the response to the governor's requirement [Inaudible 02:43:13] at the beginning of the month. So, I think I don't need to go into a lot of detail on the basics of the plan. I'm a little bit sad that I did not add mixers in Grant and Harney County, as our [Inaudible 02:43:25] come out. But I think that the reception and feedback so far has been pretty positive overall, both from other system partners. I think our media engagement and media coverage has been relatively positive as well. And I'm looking forward to, especially at the reception at the end of the first day of the meeting here today to hear a lot more from providers during that time. And so, I think that so far, it's been a positive reception, a legislatively positive reception as well.

I think there are some good areas where it aligns with the budget that's been provided or at least passed through Public Safety Subcommittee. I'm not trying to take too much thunder from Lisa's presentation, but very excited about the renewed funding for the law school pipeline program that's already been developed, and I look forward to working with the law schools, especially for the following years, not this year, but the following years to see what additional changes and maybe tighter partnership we can create between the commission and those law school programs. But we've really moved into that implementation phase now, as we begin to work through the contracts for the coming biennium. That's where a lot of the work has to be done. There's so many devil in the detail issues that we're already beginning to work through, that that's where our focus has really shifted. And so, that'll be in development over the coming weeks. And we hope to develop that as quickly as possible. So, that's the primary updates I have. I'm not sure if commissioners have questions.

Chair Jennifer Nash: Are there any questions? All right. Well, thank you very much.

Ken Sanchagrin: Thank you, Chair.

Chair Jennifer Nash: All right. Moving on to a briefing regarding attorney qualification standards. Mr. Arntt.

[No dialogue]

Chair Jennifer Nash: Yes.

Steve Arntt: Good morning, Chair Nash, Vice Chair Mandiberg, and commission members.

Paul Lipscomb: Please speak up.

Steve Arntt: Certainly. I'm bringing the attorney qualification standards back. These were presented previously in February. Everybody might remember, I know it's been a couple months. Go ahead and next slide. These are part of a larger body of work that we've been working on to meet legislative requirements. Go ahead and next slide. Agency recommends adoption of these standards at the July meeting. So, I've never [Inaudible 02:46:11] to review these. I believe everybody has seen the materials in their briefing packet. Next slide, please. And this is slide five. This is basically an overhaul of the 2019 standards. So, the 2019 standards focused mainly on kind of a time in position. And when we met with providers and discussed what the standards were going forward, there was a concern that people may have been in a position for a number of years that they might not have had the requisite experience to handle the next level of case.

So, instead of saying, for example, three years in position, these standards describe what you should have done during those three years. That's the philosophical difference between the standards. The idea was not to create standards that would lower an attorney's current qualification. In other words, they're going to slide over to the new qualification. Next slide, please. The work [Inaudible 02:47:24] on these, what the standards does, we've drafted that. We've gotten considerable input from the provider community in various practice areas. Next slide. The qualification standards remain largely the same. There are some exceptions, for example, [Inaudible 02:47:47].

Chair Jennifer Nash: You're going to have to speak up a little bit, a really hard time hearing you.

Female: We can't hear you.

Steve Arntt: I'm sorry.

Paul Lipscomb: There's no microphone.

Steve Arntt: Oh, that's very unusual that somebody says they cannot hear me. So, forgive me. The qualification standards slide over in much the same way as the 2019 levels did. The difference is, for example, in criminal, there are now five levels

instead of four. There are a few other small differences. In the briefing packet, there is a diagram that shows how attorneys will slide over into the new standards, kind of a grandfathering. Every three years, attorneys will recertify. So, you get three years to review where you are. This runs concurrently with your reporting here to the Oregon State Bar for MCL meetings. Next slide, please. There is some remaining work to be done on these. For example, we have some qualification standards that we have not yet addressed. For example, appellate representation. We focus first on trial representation, and we'll move on to the appellate work next. Next slide. Subject to any questions, this concludes my briefing.

Chair Jennifer Nash: All right. Does anyone have any questions?

Rob Harris: Thanks. I do have a question. I've been contacted, had a discussion with some juvenile providers, and I think you may have seen some of this possibly, Steve. Are the same standards applying to PCRCP and non-PCRCP counties? And if so, does that create any issues? Like because the PCRCP counties have lesser caseloads or support, I think they get more funding. Have you heard any concern raised by the juvenile attorneys that perhaps the non-PCRCP qualifications should be slightly different, or the expectations should be different?

Steve Arntt: I have not heard that.

Rob Harris: Okay.

Chair Jennifer Nash: Commissioner Reinhard.

Brook Reinhard: Hi. I just had a really quick qualification question. In Lane County, we recently had a juvenile arrested for a cold case murder. The juvenile was one of several people accused of a homicide from a couple years ago. I did a consult with a family member. Nothing happened. I'm not [Inaudible 02:50:28] with this case at all. I just wanted to bring up that under OPDC's qualifications, I don't think there's hardly any attorneys in Lane County that can handle a juvenile murder case presently. You have to be waiver qualified and murder qualified. I'm murder qualified. I'm not waiver qualified. So, I've been an attorney 16 years now, and I can't handle the case. And that's okay. I think they had to find an out-of-county person to do it. But I'm a little worried about that particular qualification when you have to have waiver and murder to handle those cases. And I know that the presiding judge in our county was scrambling as a result because it's a really, really high qualification. I'm not saying you shouldn't have that as an aspirational goal. Waiver hearings are extremely complicated. As Kayle Berger taught us, the state can almost never get through a waiver hearing.

So, good for her. We miss her at OPDC. But I'm curious if there's a practical solution when something like that happens.

Steve Arntt: I think the practical solution would be a co-counsel situation where you have one attorney who is murder qualified and another attorney who is waiver qualified. I agree with you, that's a very niche set of skills for an attorney to have both qualifications.

Brook Reinhard: Okay, thank you.

Rob Harris: Have you, and maybe you don't have this data or information, but if you were to apply these current standards to our current workforce, do you know how many people would actually qualify or fall out of qualification? And I assume that some people would fall out of qualification, the cases they are now taking. What would you do, or what would the agency do for the person who does not qualify to take the kind of cases they are taking, what kind of repair or whatever? Time frame, would they be allowed? I assume that would be the case. But have you done the analysis to find out how many would fall out of qualification?

Steve Arntt: I don't know the number of attorneys who would be unqualified under the new standards. I don't have that data. I do know that our plan is to have a six-month phase in where if you realize that you're missing something in your qualifications, you can provisionally be qualified at the higher level and remediate anything that you do not have in order to be qualified at that level.

Rob Harris: Well, how do you know six months is going to be sufficient? If you don't know how many people are going to fall out of qualification and you don't know... Maybe it's just one or two things, like, "Oh, I have to do this two months longer. Oh, I've got to do one more jury trial." I'm concerned about people falling out of qualification who are not wanting to meet these new qualifications. If they're a younger lawyer and they're looking at this, I'm just concerned if we haven't done the analysis yet, like, how much time should we give them? Do we do waivers? Is there a solution to this to make sure we don't have a reduction in force?

Chair Jennifer Nash: I mean, to follow up on Commissioner Harris' question, when you did the mapping between the current qualifications and the proposed qualifications, there was no second layer of analysis of, okay, now we have 150 lawyers that are qualified under the current standard of level three, but under the new standard, we'd have 25 of those that would be only twos, and so what would that turn out to be? That part hasn't been done at all. Like, when you did your mapping, did you also do the mapping for the current workforce? I guess that's the more narrow question.

- Steve Arntt: We don't have a map on that.
- Chair Jennifer Nash: Okay. So, we should probably do that before we adopt the standards, I think I'm hearing.
- Susan Mandiberg: I think, in fact, the commission might want to know that information before it would positively vote to adopt those standards.
- Chair Jennifer Nash: It may be that the answer is, oh, no one, or two people or whatever, but it would be good to give a heads up to who we think those people might be, too, so that they can start working on whatever qualifications they need to remediate that. Especially if we're going to tie contracting to the qualification standards, and we haven't heard that we are, I don't know if we are or not, or I guess how that's going to happen. I think that's information that would be helpful for us to know before we voted to adopt the standards.
- Rob Harris: I agree, and coincidentally or not, but we have a new contracting period coming up, and one of the terms of the contract could be report your qualification under this proposed qualification standard. We could get it. We could figure out how many people could do this. Like you say, if it's a handful, maybe a six-month period is appropriate. If it's more than a handful, maybe we have to revisit that or do some sort of a waiver process. Also, there's something in here about "or taking an approved training program." Do we have an approved training program?
- Steve Arntt: We do not.
- [Crosstalk 02:56:09]
- Steve Arntt: ...qualification and performance standards in place before we have a training program, so that we know what we're training for.
- Rob Harris: Well, but you have six months, and if that's one of the qualifications and it takes six months to get an approved training program, because we've been looking at it for years trying to get approved training, and we have a budget for it, \$575,000, and it hasn't happened. So, I'm reluctant to approve any standards until I understand the impact on our workforce and the requirements for our workforce at this point.
- Steve Arntt: I don't know that we would have the data readily available to, for example, how many jury trials an attorney has had without fairly heavy lift, but we'll do our best to get that to you.

Rob Harris: Yeah, I think you can require it as part of the contract that the workforce fills out a form or gives you the data and then let them self-report it and see where we're at.

Chair Jennifer Nash: I hear what you're saying about, because the original qualifications are based on time in position, not skill level. You might not know, but I also thought I heard you say that the idea would be that you wouldn't down qualify. So, if you're already qualified, for example, lesser felony cases, you'd be a criminal attorney 2. So, is one of the ways that we deal with the question that we're positing is that for current providers, you just slide over?

Steve Arntt: That is the plan. So, they just slide over then.

Chair Jennifer Nash: Okay, so you wouldn't say, "Hey, under these new standards, you're only a 1." I mean, I know that wouldn't be the case, but "You're only a 1. So, now you're going to be a 1, and you have six months to become a 2." It would be more the, "You're a 2, and if you want to move to a 3, you have to have all the qualifications for 3 to move up."

Steve Arntt: Right.

Chair Jennifer Nash: Okay. All right.

Rob Harris: Okay. That's better.

Chair Jennifer Nash: Yeah, that changes.

Steve Arntt: Otherwise, we would have attorneys who potentially would have a case and now suddenly they have to [Inaudible 02:58:38].

Chair Jennifer Nash: Well, that's what we're worried about. Yes.

Steve Arntt: That's the exact opposite of where we want to go.

Chair Jennifer Nash: Okay.

Susan Mandiberg: I am worried about something else that actually just occurred to me. If somebody is currently, say, a 2 because of time in practice but doesn't meet the new qualification requirements for a 2, are we setting that person up for claims of incompetent counsel?

Female: There's that too.

Susan Mandiberg: Because if we are, that's not a good idea. And so, I think we have to have something built into this that protects those attorneys who stay at a certain level, even though they don't meet what we are saying are the new qualifications for that level. There has to be some kind of explanation or something that people could say, "I am still competent at that level, even though I don't meet those qualifications."

Chair Jennifer Nash: I'll give you a really good practical example of that.

Male: Okay.

Chair Jennifer Nash: So, in my small county, not anymore, but back in the day when we had a very stable district attorney cohort and a very stable defense bar, all those people have been there a really long time, you could try a really complicated, serious case, do really well in pre-trial motion. And this happened in one of my cases, a very high profile, very complicated case. I filed a series of pre-trial motions and won. And I didn't try another case for two years because everybody knew what they were dealing with, right? So, if I said this, I mean, I'm not trying to toot my own horn, but this happens, right? So, you do really well. People know you know what you're talking about. That's the benefit of experience. Then you can go to the next person, you can say, "You know I know what I'm talking about. So, this is how we should deal with this case." And you would build this trust in the rapport, relationship with your counterpart on the prosecutor side, and you could have an honest conversation with them, and you could settle cases.

So, if we say, "Well, gosh in this time period, you have to have this many jury trials." I didn't have a lot of jury trials for a really long time because I didn't need to. And so, I think we have to build in... It doesn't mean I wasn't working filing pre-trial motions. It doesn't mean that I still wasn't a high-level defense lawyer, but I wasn't trying jury trials. So, I think we have to think about those things as well because that's going to vary from county to county. And it's going to vary from, are you a public defender where you try a lot of misdemeanor cases to where... Are you Measure 11, where maybe you're not trying as many cases because the stakes are so high? So, I think we need to think about those sorts of situations as well, when we're talking about skill level as opposed to time in position. Other people's thoughts?

Rob Harris: I think that's right. You also, as you mentioned that, what about the lawyer who's got a 0.6 caseload?

Female: Yeah.

Rob Harris: So, they could do three jury trials. Maybe they should still have five. I don't know. It's going to take them a lot longer, though, to qualify to these standards, and that needs to be considered.

Susan Mandiberg: Or a lawyer who settles a lot of cases very well and consequently doesn't go to trial but is still doing a great job for her clients, as opposed to a lawyer who settles a lot of cases that isn't doing a great job. [Laughter] Right? So, sorting all that out. I mean, going to trial may not always be, as you point out, an indication of skill. Very tricky.

Rob Harris: Yeah. And I'm looking at the implementation. If you say that people have time to really kind of slide over and then they have time to qualify, what does the... The current proposal envisions a six-month transition between the period before qualification [Inaudible 03:02:55] the newly adopted standards are implemented. Does that mean new hires have six months? What does that six-month period mean?

Steve Arntt: So, that six month is they would still qualify under the existing 2019 standards.

Rob Harris: So, they'd be grandfathered in, but they'd have six months to meet those qual...

[Crosstalk 03:03:12]

Steve Arntt: ...turning it on and saying, "Hey, here's the new thing. Last week was this."

Rob Harris: Right.

Steve Arntt: People have an opportunity and know it's coming.

Rob Harris: I still have the concern then, that how many people are going to have to do that? If you have like someone with a .6 caseload, is it going to be harder to get those trials [Inaudible 03:03:28], for instance? And then after implementation, the attorneys who have gaps due to the new standards can be qualified provisionally. So, they have six months, but they can continue to be qualified provisionally. Is that true?

Steve Arntt: Yes.

Rob Harris: Okay. So, you can say, "Well, we'll give you more time." As they work to complete outstanding requirements, [Inaudible 03:03:44] qualification process would have attorneys recertified triennially to align with their Oregon State Bar CLE certification. Does that mean that if they're a reporter under their OSB on a particular year, they'd also be this? What if the particular year is in eight months? What if their reporting year is five months after or eight months after

this new contract versus three years? I mean, I understand you're going to say every three years, but is the anticipation on that everyone get qualified according to their caseload within six months, and then thereafter, they'll report their certification along with their OSB certification?

Steve Arntt: Yes.

Rob Harris: Got it.

Chair Jennifer Nash: I can't see. [Inaudible 03:04:32] Do we have other commissioners who are still on video or no?

[Crosstalk 03:04:36]

Chair Jennifer Nash: Okay. Do you have any questions, Brooke?

Brook Reinhard: No.

Chair Jennifer Nash: Okay. Any other questions or comments? Okay. Do you have enough direction from us or a question from us that... We might not be ready in July because you might have to come back. Well, you do have to come back and explain to us all the questions we asked. This is a great topic for the workgroup to talk to us about during our next workgroup, which is not going to be July 3rd, but will be sometime in July, early July. And we can talk about all of these questions and kind of work through these issues during the workgroup session, where you have a more robust discussion with more of the commissioners too.

Rob Harris: Yeah. And to clarify, my two questions are PCR versus non-PCR. I would reach out to those attorneys.

Female: PCRP.

Rob Harris: PCRP. Sorry.

[Crosstalk 03:05:35]

Rob Harris: Hopefully, it doesn't get into PCR.

Chair Jennifer Nash: Right, right, right.

Rob Harris: And then also the mapping or workforce and their qualifications. Maybe we're not even going to get that until we get responses from the contract, if it's included in the contract requirement. I don't know. Those are my two questions.

Chair Jennifer Nash: Okay. Thank you. All right. And then moving on is Ms. Taylor. We're slightly early – oh, there you are, thank you, all right – for the legislative update.

Lisa Taylor: Yeah, absolutely. Thank you. I'm here to give a legislative update. [Inaudible 03:06:15] my screen. There we go. Great. Can you see that? Great. So, the 2025 session, as you all know, is kind of winding down. We have two and a half weeks to go. This presentation is just going to take us through a climate, a brief conversation about policy. Predominantly though, we're going to focus on the budget bill and then upcoming dates. Oh, and I will try and be louder. I apologize.

So, as I said, we have two and a half weeks remaining. Sine die has been declared imminent, which means that we're under one-hour posting rules. Multiple floor sessions are happening on some days. Yesterday, there were multiple floor sessions. The House has a floor session scheduled for Friday, which is out of the ordinary until we get to the end of session and that's kind of how you know things are wrapping up. Hawaiian shirts have not been spotted on the floor, which is also a sign that sine die will likely be happening in the coming days. So, it seems likely that we're heading closer to the constitutional sine die of the 29th, rather than their target sine die of the 18th. Also to do with our climate is that our 12-month plan was well received, as Director Sanchagrin talked about. But here are just a few quotes that came out of the news coverage of that, and it really was fairly positive things said all around, from legislators to providers and to DAs.

So, our main policy bill, obviously, that we're tracking is House Bill 2614, which makes changes to the commission statute and 337. It passed unanimously from the Senate yesterday. It's scheduled for a House vote on the 13th for concurrence. I'm not sure if they'll get to it on Friday, but that is when it's scheduled. That vote is a concurrence vote. So, the House will either vote to agree with the Senate amendments, or they'll vote to not concur, in which case it would go to a conference committee, which is a committee that the Senate President and House Speaker appoint, where they get together to kind of agree upon an amendment. And if the House does concur, it would go to the governor for a signature.

And then, of course, our budget. So, before we get too far into our budget, I want to give just kind of a general overview of what the budget process looks like. Again, this is very high level, so I'm not going to hit all the packages and everything that goes into this process. You can see the LFO recommendation is linked in this presentation. So, if you want to read through the entire recommendation, the entire budget, you're welcome to do so there. But I wanted to just kind of give an overview here. So, first, the legislature starts with

the '23-'25 legislatively approved budget. So, this is all the approved spending. Oh, I'm really sorry. I will try and speak up louder. Let me know if you're still having problems. Sorry about that.

Lisa Taylor: Is it too much of an issue? I can try and change my microphone.

Paul Lipscomb: No, it'll be good to hear you.

Lisa Taylor: Okay, just give me a few minutes. I'm going to try and switch over to something else. Is this any better?

Chair Jennifer Nash: I think it's just the...

Lisa Taylor: Oh, you know what? Somebody's coming with headphones.

[No dialogue]

Lisa Taylor: Okay, how's this?

Female: Much better.

Male: Much better.

Lisa Taylor: All right. So, I'll just start from the top here of the budget process. So, the legislature starts with the '23-'25 legislatively approved budget, which is basically all the approved spending and budgeted items through the December of 2024 emergency board. So, this becomes the base budget for the '25-'27 biennium. And from there, essential packages are added. I've included kind of the major ones here, but there's various essential packages. And these are, as the name suggests, the essentials. So, the things that kind of have to happen for us to carry on services into the next biennium. For us, inflation and the mandated caseloads were the largest adds for us, as well as phase-in, phase-out, which eliminated a lot of one-time funding from the previous biennium. So, the base budget plus these essential packages are considered the current service level for the '23-'27 biennium. And this generally is the cost of continuing to provide the same services and programming that we are now into the next biennium, is the CSL, is what people will refer to it as. From the CSL, the legislature is then able to make investments or reductions. And once those changes are factored in, you arrive at the legislative recommended budget, which is what was voted on at the Public Safety Subcommittee on Monday, and what will be heard in the full committee tomorrow on Friday. So, that's kind of how we got through this process.

So, House Bill 5031 is our budget bill, and here's just kind of a snapshot of that process that I just laid out. So, you can see the actuals from '21-'23, and then the legislatively approved budget for the '23-'25 biennium. Then those essential packages were added to arrive at this current service level for the '25-'27 biennium. And then once the legislative packages are added, you arrive at the LFO recommended budget for '25-'27. So, this number right here, the \$707 million and the 180 positions is what has passed out of Public Safety Sub and will be moving forward. And so, I want to just kind of go through our main areas of where these investments are. So, there's the mandated caseload, the THIP carry-forward costs, and then legislative investments.

So, starting here with the mandated caseloads, you can see that we have a total of \$70.3 million in a total increase from our forecasted caseloads. So, that's a pretty significant portion of the investments that have been made to the agency. So, while we are getting a lot more money, the bulk of that is going towards mandated caseload. So, that's to cover the increased cases that we're going to see in the next biennium. Our mandated caseloads are coming in two packages, which normally you would see the CSL is built, and then a new forecast comes out and the legislature updates mandated caseloads based on that new forecast. Ours look a little bit different. A lot of that is due to the fact that our public defense forecast is so new. The first one was put out in April of 2024. And Senate Bill 337 directed the Office of Economic Analysis to start the public defense caseload, and that's released in April and October of each year.

So, we built our agency request budget, and therefore the governor built her budget based on those April 2024 numbers, which were the numbers we had at the time. And then the most recent April 2025 forecast, OEA, the Office of Economic Analysis, really recognized the problem that was created by discounting the existing caseload that providers were going to carry into the next biennium. And when that was factored in, we saw the significant increase of the forecasted caseload into the upcoming biennium. And this is a large part of why Package 840, which is the legislative package for mandated caseloads, why that number is significantly higher. So, these two packages represent a full funding of the OEA forecast as it was priced by this agency. And that full funding of the forecast is really significant, especially accounting for those existing cases.

So, while this is a really significant investment, it is a very large portion of the money that is going into the agency, and like I said, it's a new forecast. This is a new process for both us and for OEA of forecasting public defense caseloads. So, as new forecasts come out, these mandated caseloads are going to be adjusted based on those new forecasts. So, this number will likely change in the future just as any mandated caseload would, but I wouldn't be surprised if we're going to see more of a shift than most mandated caseload agencies would see just as this forecast process kind of normalizes and stabilizes.

So, next are primary legislative investments. So, the first one is 2.2 million for Enhanced Provider Capacity Pilot Program. This is in alignment with the 12-month plan, and this is the Enhanced MAC Program. So, a set of attorneys who meet certain criteria, who could choose to take additional MAC beyond the 100% MAC limit. And this program is in the budget directed towards crisis counties. So, it's limited to those counties. The next is 3.4 million for Law School Clinics. These are the law school clinics that operated this past year and were taking cases. This is just additional funding to continue that for the next biennium. There's also an additional budget note that's connected to this, which I'll go over in a bit. We were also given an expedited resolution attorney. So, this is an existing vacant deputy general counsel position that's currently in CAP, and the budget moves that position over to the Trial Division. So, this will be a new state attorney within our Trial Division, who's dedicated to primarily resolution dockets in Washington, Multnomah, and Marion counties.

We also got investments for agency staff, including assignment coordinators, PAE and AP staff, and the continuation of the E Board positions which are some IT positions as well as procurement, and that's for \$3 million. And then we received a placeholder for potential FCMS debt services. FCMS is bonding authority, so it is going through the bonding bill through a separate process. But this bill, our budget bill, is basically creating a spot that they can put that money should it be approved. And then the next large investment is 18.4 million for the THIP carry-forward. So, THIP, the Temporary Hourly Increase Program, is ending on June 30th of this year. They made it very clear that the THIP rate is not subject to inflation. So, what the THIP rate is now is what it will continue to be for cases that have already been assigned. And so, this 18.4 is for cases that will go forward but that were assigned in this biennium.

So, if somebody takes a THIP case June 30th, 2025, they will continue to receive that THIP rate through the life of the case. But no one will be able to pick up a THIP case starting July 1st. Also, this 18.4 million number is different than what our initial THIP POP number was. It was recalculated by the agency accounting for billing basically moving forward into this biennium. Our changes in billing practice mean that people have been sending us bills sooner rather than holding onto them through the life of the case. So, we were able to move some of that projected THIP carry-forward money into this biennium, therefore decreasing our THIP carry-forward here.

So, I think the question that probably most folks are interested in is this, "What are we buying?" question. So, these are preliminary calculations. We really need to make sure that we have a full picture of the budget and that session's over and that we can really double- and triple-check all of these numbers, but preliminary calculations are showing that we'll be able to pass on that 6.8%

inflationary increase to our contracted providers. Our hourly attorney rates will also receive a similar inflation rate increase, bringing them up to \$140, \$155 an hour. And we're currently working on figuring out the hourly investigator rates and the inflation rates for our other provider types. We'll have final numbers will be provided once the session's over. And again, that full budget picture is available.

The interim status reporting. I know that last biennium, we were reporting quarterly and that was a pretty big part of what I did, honestly. I actually have fewer reports this coming biennium, though they are more expansive. First, we have this interim status reporting, which is due in January of 2026 and then in September of 2026. So, this report needs to provide an update on the unrepresented crisis and the implementation of the 12-month plan. It needs to report on agency operations and immediate and long-term planning and also changes to the service delivery model by provider type, by forecasted versus actual caseloads, and by providing cost factors, including the cost per case. These are all data points that we are either working on or have. I think especially like the provider types will be similar to the data that we would provide in the remediation plan. And then finally, biennial financial forecasts.

Our next report is an operating at capacity report. So, this report is tied to a \$22.1 million bucket, basically, of money that DAS, the Department of Administrative Services, will be unscheduling until we submit this report and the legislature accepts the report during the 2026 session. So, by unscheduled funds, it basically means that those funds are for us, for our agency, but we won't get them until they're scheduled. It's similar to a SPA, except for it's not that the legislature has it, it's that DAS has it. I don't believe... The intention of this unscheduling of funds isn't to prevent us from having that because that 22.1 million is about 5 million of all the provider type accounts. So, juvenile, adult trial, the Trial Representation Division. It's really just more of an accountability to make sure that our reporting is being turned in and that we're making progress on these things.

So, this operating at capacity report is requesting a detailed comparison between budgeted and actual capacity for both contract providers and the Trial Representation Division. A plan of action to address those providers or Trial Representation Division that are operating at less than 90% of budgeted capacity and preliminary results of the Enhanced Provider Capacity Pilot Program, that enhanced MAC program. And then we have our law school reporting. This is due to the 2027 legislature. The report's just to outline the total number of students who are trained, clients served, outcomes, and then any changes to law school service delivery. The budget note also gives the agency permission to restructure the law school program for the '26-'27 academic year to better address the unrepresented defendant crisis.

Finally, we have our key performance measures, which were in our budget bill. The legislature has added a new KPM, which is the percentage of financially eligible persons receiving a public defender, with a target of 100%. And then they're requesting that we report to the 2026 legislature with a comprehensive restructuring of the commission's key performance measures and targets for the '27-'29 biennium. So, this is a report about how we plan to update our KPMs for submission and approval for the upcoming '27-'29 biennium. Finally, we just have a few upcoming dates. Again, our budget bill will be up in the full Ways and Means on Friday morning. Target sine die is on the 18th. They're likely to... Well, I don't know, but I would think that they're likely to pass that date and head towards the constitutional sine die, which is on the 29th. And then, of course, our next commission meeting on the 16th. And with that, there should be a thank you on that slide, but thank you, and I'm happy to answer questions.

Chair Jennifer Nash: Does anyone have any questions? I have questions, but does anyone else have questions? I can't see, oh, okay. All right, my first question is regarding the \$2.2 million for increased MAC. You said that that funding was limited to crisis counties. So, what I want to know, is the funding limited to crisis counties or the program limited to crisis counties? In other words, can we in counties that are not crisis counties allow contractors to take more than 100% of MAC up to 115% and use the funding from the mandated caseload money to pay for those enhanced contracts?

Lisa Taylor: I think that's a very good question, Chair, and I don't know if we know the answer to that. I believe that's one of the things that we're going to look for clarity on that. Oh, Director Sanchagrin can take that.

Ken Sanchagrin: So, your interpretation is the reading that I have of that section of the budget note. I did have some conversations.

Chair Jennifer Nash: Which interpretation? It was a question.

Ken Sanchagrin: The purpose of that statement was to limit the funding to the crisis counties.

Chair Jennifer Nash: Okay.

Ken Sanchagrin: We provided LFO with estimates of what it would cost, perhaps on top of mandated caseload, for both crisis counties in one bucket and the rest of the state in the other bucket. And I think that the cost for the rest of the state was just too high to bear. So, we received the 2.2 for the crisis counties. The way that I read it is that that is a note limiting that money to those counties. And that, like you mentioned, that if we can within budgetary constraints, raise MAC, or have the voluntary program to go above MAC in the other counties,

that we can do that. I've had some initial conversations. I want to talk with John at LFO to make sure that there's no disagreement there. But that's my reading, when you kind of think of the purpose of that whole statement there.

Chair Jennifer Nash: Right, okay, thank you. And then you gave a very helpful presentation about what reports are due when, and I'm wondering if you can make sure that we have that rather than just on a slide, a separate email or separate communication to us so that we can kind of track that ourselves and remember that those are things that we need to be talking about during commission meetings or workgroups well before the reports are due. So, if you could get that to us in another way, that would be really helpful for me, and I think probably for other commissioners as well.

Lisa Taylor: Yeah.

Chair Jennifer Nash: And then my other question is the interplay between the OEA forecasts in April and October and the budget. In other words, let's say in October of 2025 and in April of 2026, there is new forecasts that increase the caseload. What would be the mechanism for us to go back and say, "Okay, you only funded us for X, but we are really talking about Y." Would that be we'd have to go to the E Board or does the legislature already have in their process a way to adjust our budget without us having to go through a whole 'nother big process based on the OEA forecast?

Lisa Taylor: Yeah, thank you, Chair. That's a great question. I'm wondering if Mr. Amador is still on. I'm less familiar with the mandated caseload process, but it's my understanding that part of the system is built to update budgets based on forecasting.

Ralph Amador: I am still on, Chair Nash, Lisa Taylor, members of the committee, Ralph Amador for the record. The way the mandated caseload works is that we get a forecast twice a year and we reshoot our numbers to see what the increase has been if there's a need. Our budget is primarily based on a forecasted need. If the forecast doesn't go up, then there's no real mechanism for us to say that there's a need for additional funding because that's how the budget is being built at this time. We would have to have a pretty documented reason for going forward to ask for money to increase in certain areas. If it's a new program, that would have to be done either as a proposal at the short session maybe or through the policy option package when we build our budget. If there's a documented need, if there's an explosion somewhere, we would normally use the short session or the normal budgeting process. The E Board is limited for emergencies only. They have a limited amount of funds that they dole out. Does that answer your question?

Chair Jennifer Nash: Sort of. I think what you're saying is if the forecast is significantly greater and we don't believe we have that within our budget, we would go back in the short session and ask for additional funding based on the updated caseloads.

Ralph Amador: Yes, ma'am. That's exactly how it would work.

Chair Jennifer Nash: Okay. So, here's the opposite scenario. Let's say the OEA forecasts drop 15%, which they won't, but let's just pretend. Are we in a position where we have to give 15% back?

Ralph Amador: That would be a conversation. My experience would be that we would not give that money back, but through the building of the subsequent bienniums process, that's when we would talk about what the need is. And we do have the ongoing cases going forward and the current work. So, the forecast is meant to dictate that we're going to be doing quarterly meetings to watch the process and get input from stakeholders and from our contract analysts to talk about what the difference in the real world is versus what the forecast is and hopefully try and provide information that could inform the forecast if they're seeing something different than what we're seeing. We can't change the forecast, and we can't influence what comes up because the forecast is independent, but we can provide data that says... If we're saying there's a huge amount of juvenile somewhere or a huge amount of this somewhere and the forecast is saying something different, well, then we would begin the process of a conversation, get data and present that data to OEA before they put their forecast out so they can look at that data and go forward. Does that make sense?

Chair Jennifer Nash: Very helpful, thank you. Are there any other questions that people have based on my questions? Okay, I have one other broad question. So, this new report about the operating at capacity report, we heard from Judge Raschio today that in Eastern Oregon, things are different, and it really is about bodies, not MAC because of the unique requirements. So, I'm wondering is the expectation by the legislature that everybody will be working at above 90% or are we going to be able to, in these reports, explain when we have specific providers like Eastern Oregon who are at less than 90% for really good reason. I mean, is that something that is contemplated or do we have a sense? We may not know. Do we have a sense that it's just a hard line and everyone's got to be above 90%?

Lisa Taylor: Yeah, so the budget note reads a plan of action to address those providers that are operating at less than 90%. I would think, obviously, it will be up to the commission what we're submitting, but I would think that if we are saying this provider, there's a reason they're below MAC at 90%, and we are comfortable with it being at that level, we could provide that reasoning to the legislature. How the legislature accepts that is going to obviously be up to the legislature.

Chair Jennifer Nash: Thank you. I think I had something else percolating around, but I don't remember what it is right now. So, thank you very much. That's very helpful.

Lisa Taylor: Great, all right. And I'll be providing you with an end of session report, which can also outline some of those report timelines and will need to come out in front of the commission and everything.

Chair Jennifer Nash: That's fine. Do you have a sense about concurrence? Do you have a sense about House concurrence on 2614?

Lisa Taylor: I do not at this time. I think we're just going to have to wait, yeah.

Chair Jennifer Nash: Okay. Thank you, Ms. Taylor. That's all the questions that I have and nobody else has any questions. Thank you very much for your time today and your information. All right. We only have a report for FCMS, not a presentation today, which is that it's basically just moving forward, right?

Ken Sanchagrin: Yes. There's not substantial updates, but we did that paper up there.

Rob Harris: Two things after looking at this. Thank you for this new timeline. It's much easier for me to read. This timeline, I was going back through some of the other reports, trying to see if it was congruent with prior reports as far as time. Since they are so different, I just want to ask you, are we still on time with this management system getting implemented? And do we know when it would be ready to go and when it could be mandatory usage by our providers?

Ken Sanchagrin: Right now, we're still on our timeline. The biggest unknown is the procurement and especially the contract negotiation period. And so, it is a little difficult for us to put a true expectation date on rollout for providers until we have a slightly better idea on that procurement piece.

Rob Harris: Okay. And do we anticipate this new contract that'll cover the eventual biennium? I can't remember whether we're going to do a 90-day or whatever extension, but is it going to have some requirements in there regarding using this system or is it going to be optional?

Ken Sanchagrin: I think that, I mean, maybe getting to your other question, I think from what I'm seeing, it's really more of a next cycle.

Rob Harris: Okay.

Ken Sanchagrin: So, we'd be thinking '27-'29.

Rob Harris: All right. Great. Thank you.

Chair Jennifer Nash: All right. With that, is there anything else for the good of the order? All right.
With that, we will adjourn. And thank you very much, we're early.