

Chair Jennifer Nash: Good morning and welcome to the February 19th, 2025, meeting of the Oregon Public Defense Commission. I'm Jennifer Nash, chair of the meeting. We have a number of items to cover on our agenda today, but before we get started and before we get started with public comment, I wanted other commissioners to know and also just members of the public that in the last week or the week before last, I think, Commissioner Smith resigned her position because she took an employment position at the Oregon Youth Authority. So, we now have two vacant commissioner positions. Both of those vacancies are voting members. That does not change the quorum rules, however. We still need five voting commissioners present in order to have a quorum, and we do have that this morning, but it does make, until there's new appointments, attendance even more important.

We have put out a general announcement in a few different places for commissioner positions. Commissioner Smith, Addie Smith's position, was appointed by the Governor and is a person who has been a practitioner specializing in juvenile area, and then Jennifer Parrish Taylor's position is also appointed by the Governor and is a general position with no special areas of expertise attached to it. So, if a person is interested in applying to be a member of the commission, please let us know. And also, to get that process started, go to the Governor's page on boards and commissions and follow the instructions there to put an application in Workday and let us know that you've done that so that we can take a look at your application. It's a rolling period, so applications are open until the positions are filled, and they will be filled by Governor appointment. So, thank you. And with that, we will turn to public comment. Public comment will be limited to three minutes, and we first start with Addie Smith. Ms. Smith, are you available? I know I saw her pop in a few minutes ago. So, Ms. Smith? All right. Moving on then to Carl McPherson.

Addie Smith: I'm here. Can anybody hear me?

Chair Jennifer Nash: Yes. Ms. Smith, please go ahead.

Addie Smith: Sorry. My name is Addie Smith and today is February 19th, 2025. I'm speaking before the Oregon Public Defense Commission. Can you guys see me? I don't know what's going on with my camera.

Chair Jennifer Nash: We cannot, but we can hear you.

Addie Smith: I'm sorry. I've never used my cell phone. So, I'm sorry. Hang on.

Chair Jennifer Nash: Ms. Smith, you can proceed without your camera on. All right, we're going to pause you, Ms. Smith, and I'll call you again after you get your camera working, and we'll move on to our next public comment, which is Carl McPherson.

Carl Macpherson: Good morning, Chair Nash, Executive Director Kampfe, commission. My name's Carl Macpherson, I'm the executive director of Metropolitan Public Defender. I'm also a member of Public Defenders of Oregon. Thank you for allowing me the opportunity to give comment this morning. First of all, we did review, as Public Defenders of Oregon, the workgroup meeting that happened on February 13th. Given timing, we were not able to provide testimony outside the 48-hour window, but we did send a letter in regards to contracts. So, I hope you've received that and I know there'll be opportunity to talk about contracts further going forward, and we look forward to being engaged on those discussions about what the contracts should look like and what provisions are important to the provider so that we can provide effective and ethical representation.

But I want to talk more about the nonprofits generally and about MPD in this short time and remind the commission and those watching that the nonprofits, we have over 450 full-time staff at our offices, we handle more than 35,000 cases per year. We work for adults and children in 15 counties as well as statewide. In the materials, you have a six-year workload plan where you talk about recruitment and diversity and having non-attorney staff. That's what the nonprofits have been doing for the state for decades and in terms of MPD for 50 years. We are the leading provider in terms of recruitment, bringing new attorneys into the state, training them, providing mentorship, supervision, and oversight. We have attorneys, investigators, legal assistants, case managers, paralegals, social workers, and other support staff. That is why the ABA and their 10 Principles that have been around since 2002 say that jurisdictions that have primarily dedicated public defender offices is part of a mixed-model system because nonprofits and public defender offices that are doing the work full-time and have that level of support are providing effective and ethical representation.

We have brought in over 160 new attorneys in the last five years, 115 from out of state. While the nonprofits do have attrition, all the providers have attrition, and the attrition for nonprofits seem to be going more towards the State Trial Division and the THIP program as we advance with those programs. In contrast, based on the slides presented today in the agenda materials, the THIP program has handled 7,000 cases in the last two and a half years, 7,723 cases at a cost of \$49 million over two and a half years. MPD alone from July 1st of 2023 to December 2024 handled 16,000 cases. So just want to reiterate the importance of the nonprofits to the ecosystem of public defense in the state of Oregon, the work that we're doing, the tireless work that we're doing every single day for our clients, and reiterate slides 137 and 140 that show in Multnomah County, the contractors, the full-time providers, 18,455 cases; the State Trial Division, 197.

Chair Jennifer Nash: Thank you.

Carl Macpherson: For Washington County, almost 17,000 cases, the State Trial Division, 188, and THIP, 657.

Chair Jennifer Nash: Thank you, Mr. Macpherson.

Carl Macpherson: So, I hope that nonprofits are prioritized going forward. Thank you.

Chair Jennifer Nash: Very, very helpful. Thank you. All right, Ms. Smith.

Addie Smith: All right. Can you hear me now?

Chair Jennifer Nash: We can. Thank you.

Addie Smith: All right. Can you see me now?

Chair Jennifer Nash: Yes, we can.

Addie Smith: My apologies. I don't know how to work this phone, clearly. My name is Addie Smith. Today is February 19th, 2025, and I am speaking before the Oregon Public Defense Commission. The Oregon Public Defense Commission has a budget of \$1.7 billion, yet contracted attorneys by the commission are refusing to provide the audio from the hearings and trials for the defendants they represent. These contracted attorneys oftentimes don't show up for court for hearings, leaving the defendants to the court's whim, where the judges and the DA's office file and grant motions illegally. Without an attorney present, the motions are granted. Contracted attorneys from OPDC have a pattern that they've successfully implemented in court with the DA's and the judge's knowledge and complete cooperation. They don't come to court, and this is when the DAs file motions that are granted by the judge. The defendant doesn't have anyone there to represent them, and this is illegal, but in Washington County, everyone involved is getting away with it. They have no problem violating a defendant's rights, especially if they're Black. Sometimes these contracted attorneys will send one of their colleagues to court, wherein the colleague will state that they have no knowledge of the case and will never object to the motions being requested or to the judges granting them.

These contracted attorneys aren't properly signed up with the jail so that the defendant can contact them. These contracted attorneys aren't going to the jail to meet with the defendants until the day before trial, if they even do that. These attorneys violate the terms of the contracts they've signed with OPDC. These attorneys have relationships and friendships with the DAs and have openly stated that they will not, quote, ruin 10- or 20-year friendships with the

DA's over a case wherein they're representing the defendant, even when the defendant is innocent, end quote. There is no oversight by OPDC in the courtroom or to even ensure that the contracts they've signed with these attorneys are being followed. Why would a defendant want an attorney who's just a body? These contracted attorneys receive thousands of dollars to just be a name and a body. They do nothing to defend their client. The contracted attorneys and even the commission itself have the audacity to be upset with defendants and their family members for complaining about the poor services being provided by the contracted attorneys. They want to blame these families for the way they express their anger and frustration. There is no wrong way to express the anger, frustration, and disgust. The only way are through lawsuits, which must be the biggest part of this \$1.7 billion budget. Demanding that families be silenced will also be met with lawsuits. The First Amendment exists for a reason. The contracted attorneys by OPDC are abhorrent. They shouldn't be given second chances to harm more lives. Complaints are met with contempt. Complaints do not lead to terminating contracts with poorly performing attorneys. Complaints don't actually do anything, and we will not forget what OPDC and these contracted attorneys have done to our families in upcoming elections, including Governor and up and down the ballot, including in the coming years for the White House. Black people have no allies, and we will not forget it. Thank you.

Chair Jennifer Nash: Thank you, Ms. Smith, for your comments. Next is Grant Hartley.

Grant Hartley: Good morning, Chair Nash, Executive Director Kampfe, members of the commission. My name is Grant Hartley. I am the Multnomah County director for Metropolitan Public Defenders. Thank you for the opportunity to speak today. As I'm sure many of you are aware, there have been a flurry of news stories and interviews conducted by current and former district attorneys attacking nonprofit public defense providers like MPD. I wanted to use my short time to reiterate the importance of nonprofits in our public defense ecosystem as the commission considers the six-year plan and the future of public defense.

Contrary to lies being spread by these current and former DAs, nonprofits are not the cause of the unrepresented crisis, but rather a critical part of the solution. The crisis is the result of a shortage of attorneys statewide. MPD has a network of law schools nationwide from which we recruit classes of new attorneys every year. We train them, and we provide meaningful supervision. Every year, we are bringing in large numbers of new public defenders in Oregon in a way that no other provider type is or can.

And yet, even as we train the next generation of public defenders, we continue to pick up cases at a normal rate. We are currently at 94.3% of our MAC, despite MAC unfairly undervaluing low-level cases like misdemeanors and lesser

felonies, which nonprofits must take in order to train these new attorneys. And we are doing all this in a jurisdiction with a complicated court process and long times to disposition, with clientele who have more acute substance use disorder and mental health issues than ever before, with mountains of new electronic discovery like body cams, and with limited to no access to our in-custody clients due to staffing shutdowns at the jail. There is not a work stoppage. That is simply offensive and ignorant. We are doing everything we can to help our clients and help resolve this crisis. I hope that the agency and the commission will be proactive in helping to push back against this campaign of lies and misrepresentations and to support nonprofit providers who are critical to the future of public defense here in Oregon. Thank you.

Chair Jennifer Nash: Thank you, Mr. Hartley. All right. Excuse me. And that concludes the public comment portion of the meeting. Next, we will move on to an update regarding unrepresented persons in Oregon courts. Director Kampfe.

Jessica Kampfe: Thank you, Chair Nash, members of the commission. We have a brief overview of the unrepresented numbers across Oregon, and this has been put together with help from our research analyst, Maddy Ferrando. Can I have the next slide, please? Here are the trend lines for unrepresented persons in Oregon. As you can see, the in-custody unrepresented numbers have been relatively stable for a significant period of time. This is due to the prioritization that we put on identifying counsel for people who have the greatest liberty interests at stake, those who are incarcerated without a lawyer. While we have been able to hold the line with the in-custody unrepresented individuals, we do continue to see an increase in the out-of-custody unrepresented persons, and that includes the probation violation cases.

One of the tools that we've been using to address the unrepresented persons crisis is the Temporary Hourly Increase Program. I think it's worth noting that the primary way in which public defense is provided across the state is through our contracted providers. That really is the first line of providing representation to Oregonians, and programs like the THIP program are designed to address the overage, the cases that can't be handled under the contracts. And so, here are the numbers for our THIP program. That program has provided representation in nearly 8,000 cases to 5,200 individual clients. The costs for THIP have been increasing over time. You can see broken out what types of expenses are associated with this program. The investigator fees are in orange, the attorney fees are in light blue, and all other fees are in dark blue. Because this is a standalone program, this is total cost for the program. This is not the differential cost between this program and another way of delivering these services. Next slide.

Starting last year, we began a process whereby we used intake forms and our assignment coordinators to assign cases out, with a focus on cases that are subject to the Betschart ruling. This is a Ninth Circuit case that says that if certain individuals who are incarcerated are not assigned a lawyer within seven days of their arraignment, then they'll be released from custody regardless of their risk to public safety. And so, our assignment coordinators have worked really hard to ensure that we are appointing counsel on all of our top tier cases that are subject to that Betschart ruling. So, they have successfully appointed counsel on 1,500 cases for over 1,000 clients.

We can see where most of those assignments are occurring. Unsurprisingly, they are in the same counties that have an unrepresented persons problem. And so, we have really seen that as this unrepresented crisis has played out over the past couple years, that it is less of a statewide issue and more of a six-county issue. And so, unsurprisingly, the majority of the Betschart assignments align with the counties where the crisis is most pronounced, and the THIP program has been an important tool for the assignment of cases, but it hasn't been the only tool. So, our assignment coordinators have assigned 196 cases to contracts, 1,000 cases hourly, and those are THIP cases, and then 312 cases to our Trial Division. And our Trial Division attorneys play an important backstop in preventing Betschart releases, so when cases are on day five and the assignment coordinator is not able to identify counsel for a tier one priority case, Trial Division is able to step in and accept appointment on those cases to prevent the Betschart release. And I think that is my last slide. Thank you.

Chair Jennifer Nash: Are there any questions about the presentation from any commissioners? Yes, Commissioner Buckley.

Peter Buckley: Thank you, Madam Chair. Jessica, the slide with the THIP program, January of this year seemed like a significant spike. Do you know what the reason for that spike is?

Jessica Kampfe: Those are bills paid. So, that slide shows money that walked out the door. So, it appears that we processed a big spike in invoices in January. I see Ralph Amador has turned on his camera. I don't know if it's to answer that question or because the budget presentation is next.

Chair Jennifer Nash: Go ahead, Mr. Amador.

Ralph Amador: Good morning – Ralph Amador for the commission – Chair Nash, Commissioner Buckley, and the commission. The reason there's a spike in January is exactly as Director Kampfe has said. Those are bills, money out the door. We were closed in December for a good amount of time because of the 1099 processing that actually happened. So, while we were processing everything from the 26th

through the 2nd of January internally, we couldn't release any batches until that time. So, on the 2nd, going forward, we did a multitude of big, huge batches to get payments out the door, and that's why there's that big spike. If you notice in December and partly in November, the numbers were down some, but then they jumped back up. So, over the three months, it does average to something more stabilized.

Peter Buckley: Thank you.

Chair Jennifer Nash: Any other questions? Oh, Commissioner Harris.

Robert Harris: Thanks. I have a couple of questions, I think they're pretty quick. On the out-of-custody probation violations, do you know how many cases or how many clients that is?

Jessica Kampfe: Let me take a look. Interestingly, the out-of-custody probation violations are largely... Oh, are you talking about the unrepresented trend slide, the first slide?

Robert Harris: Yeah, I think so. I don't know. Yes, that. How many people are unrepresented out-of-custody on PVs?

Jessica Kampfe: Just in looking at the slide, it's above 200, but less than 400. It looks about 350. But I don't have that information handy; I do think that OJD's website has it handy. Look at that. Maddie.

Madeline Ferrando: As of today, it is currently 318.

Robert Harris: 218?

Madeline Ferrando: 318.

Robert Harris: 318. Any chance we could contact the courts in those counties and say, "If this person's been out of custody on a PV for more than six months and has not re-offended, we can dismiss the PV"?

Jessica Kampfe: We have been trying to have local conversations with the six counties where the unrepresented population exists about local solutions for those types of solutions, creative solutions, working with the public safety stakeholders. And we had exactly that conversation around probation violations in Marion County and came up with a solution whereby Trial Division would accept appointment of, I believe, 200 out-of-custody probation violation cases in Marion County. And Judge Prall came and talked to the commission at our last meeting about that and thanked us for the progress the Trial Division had made there. So, yes, we can have those kinds of local conversations with judges about things like

probation violations. We do see that in looking at the THIP data specifically, Marion County is the, I think, only county using THIP on probation violation cases.

Robert Harris: Okay, thanks. I was just thinking about what Commissioner Lipscomb had mentioned about how this is also the responsibility of judges and the other parts of the system here to help us on this, and that seems like that would be an ask that they could easily give, but perhaps they are not willing to. On the THIP program, I know we had talked or maybe I'd asked about this, about if those cases were under a contract, what would the cost be? I know that your budgeters don't want to do that, but it would be an informative piece of information, I think, for the Governor's office or for the Legislature to understand the actual cost of not expanding the contract to other providers, perhaps.

Also, I noticed on that, I was trying to do like a straight this many cases divided by \$51 million or the opposite, but it's probably skewed because it looked like 4% or 5% of these cases were either murder or J. Law cases. So, it's hard to get data out of that unless we have a better understanding of what those numbers mean. But I think it's a great... You're collecting the data, I'm hoping you're using it for purposes for evaluation, for caseloads, hours per case, per case types, and the actual cost of hourly providers. That's, I guess, more of a comment than a question. So, thanks.

Jessica Kampfe: Thank you, Commissioner Harris. And at the end of our presentation today, I'll go through my director's notes, which we did gather the commission's questions from our last commission meeting and attempted to provide data-informed answers to those questions. Some of them are around that type of comparative analysis. As we move forward, if commissioners do have questions, we are happy to take them back and work on developing answers for them at the next commission meeting. So, I hope to be able to give you the kind of information you all need to provide oversight.

Chair Jennifer Nash: Thank you. Just a couple of comments and kind of an invitation to Director Kampfe to talk a little bit more about this. I've been fielding some questions from legislators about the utilization of the Trial Division and how particularly that the Trial Division's cases, the types of cases aren't as serious as perhaps the Legislature contemplated when forming the Trial Division. We've had some discussions in those meetings, and I think it makes sense to talk about it here. About how the Trial Division and other contractors and different types of contractors are utilized to deal with the Betschart ruling, and really utilized to deal with the unrepresented issue, and how they're actually being appointed and what types of cases they're being appointed to and what the impact would

be to the system overall, if that prioritization changed. So, I think this might be a good place to talk about that, Director Kampfe.

Jessica Kampfe:

Absolutely. Thank you for the invitation to talk about it. So, when Trial Division was first envisioned, I think there was a concept that they were going to go out and take sort of the most difficult, highest severity cases across the state. And as Trial Division was starting to get up and running, we were starting to hire people into these positions, the Ninth Circuit's opinion in Betschart came out, and that was really an intervening circumstance that impacted the types of cases that Trial Division has been picking up. And so, the agency worked to create a policy on how we would assign cases under the Betschart ruling to prevent pre-trial release, forced pre-trial release of folks that presented a high public safety risk to the community. That policy was developed internally but was provided to the Oregon Judicial Department to give us feedback on, which they did do, as well as to the district attorneys to provide feedback on, and it was presented to this commission and is published. And so, we're really being very transparent in the way in which we prioritize assignment of counsel.

What has happened is that every day at arraignment, our contracted providers are accepting appointment on cases, and that really is the frontline of how public defense is provided in Oregon. They're taking the bulk of the new cases that are being issued every day. At some point, some of those contracted providers are hitting a threshold where they can't accept any more cases, where they don't have capacity to accept additional cases, and so they shut off and there isn't a lawyer available to accept appointment on that case. At that point in time, the case goes on to the Oregon Judicial Department's unrepresented persons list and we are receiving Nintex forms. So, the court is letting us know, "Hey, these are cases that need a lawyer appointed on them." Our internal staff is then working to find lawyers for those folks, and they are reaching out to contracted providers, they are asking hourly providers, and they're working with our Trial Division to accept appointment on those cases.

Because of the way that the cases are weighted, and I think you maybe heard Mr. either McPherson or Hartley talk about this, the misdemeanors and minor felonies aren't valued very highly under the contract. So, oftentimes, contracted providers are more interested in taking the more serious cases. It's really a lot harder to provide representation for 300 clients under a misdemeanor caseload than it is to provide representation for, say, 30 clients under a major felony caseload. And so, there's an incentive for contractors to want to take those more serious case types.

Additionally, because of the payment structure in the hourly rates, we pay a higher rate for murder cases, child abuse cases, ballot Measure 11 cases than what we pay for misdemeanor cases. So, our hourly providers are also

financially incentivized to take those more serious cases, which means that our assignment coordinators are often able to find lawyers for people either in the contracted lawyers or the hourly lawyers for those most serious case types. And that means that the folks that are at risk of release under the Betschart ruling if we don't identify counsel for them are the people that have more of the C felonies and misdemeanor cases, as well as more serious crime types where there's a lot of conflicts of interest or a client who has had a number of lawyers appointed over a period of time. So, that ends up being, when our Trial Division is serving as a backstop, the types of cases that they are able to serve as a backstop to prevent the release on. So, clients that have a lot of conflicts or have had a lot of lawyers appointed to them that maybe have more serious cases, and cases where there's a lower value associated with that case. And so, that's going to be a lot of the domestic violence cases and like burglary cases. Those are tier one cases that don't have as much value associated with them under our contracts or our payment structure where our Trial Division is really serving as a backstop to prevent the release.

This is, of course, an internal policy document that does this prioritization. It's something that we could potentially change and have our Trial Division start taking those more serious case types. However, doing so does come with the risk that other provider types, other parts of our programs that we're running, would be less likely to take those cases and that we would see more tier one cases released under Betschart. So, that has been sort of, as we've seen these programs play out now since the Betschart case was decided the beginning of the summer, one of the patterns that we've seen develop.

Chair Jennifer Nash: And just to be clear, I mean, there's a pretty high public safety risk with potentially releasing people who are in that tier one without a lawyer.

Jessica Kampfe: That's right. For example, strangulation is a Class C felony. It has a high lethality index, but it doesn't have a super high value under our MAC model or under our rates for cases, so that's the type of case that our Trial Division is more likely to be assigned.

Chair Jennifer Nash: Thank you. Does anyone have any questions or comments about the information that Director Kampfe just presented? Okay. Well, thank you for that information and the update on the unrepresented crisis, and let's move on now to the budget update.

Ralph Amador: Good morning once again, Chair Nash, members of the commission, Director Kampfe – Ralph Amador for the commission. This is the budget presentation for the period ending December 31st, 2024. As always, after each slide, I will pause for about three seconds to wait for questions. If there's none, we'll move on to the next one. Thank you. There we go.

For the adult criminal trial area, the expenses are moving as expected. December budgeted amendments were processed as planned and we're still working with the plan that was submitted to obligate funds. For juvenile, this again is spending as expected. These are contract payments, and we are still seeing an overage due to the Marion County juvenile contract that was established in November. Parent Child Representation Program, again, these are contracted payments, and they're moving as forecasted. You'll see that it's showing a problem, and this is due to IV-E payment recovery. The reason for this is we're not getting enough qualified expenditures, and we will not be able to process the final payment for IV-E because we won't recognize those expenditures until after the biennium is over. So, we will be looking for, in the February rebalance, to fix this issue.

Preauthorized expenditures, this is projecting expenditures for the THIP continuation, and we also projected increased appointments with additional staff. So, this, we're trying to cover all the possible possibilities we could have for the extension of THIP going through June 31st. Court mandated expense, again, we are projecting expenditures for THIP continuation and we also added expenditures for the appointment of additional appointments because we have additional staff coordinating those. Court mandated doesn't look as bad as preauthorized expenditures because in the December rebalance, we had an influx of cash from rebalance, and we also got about 2 million from SPA money put in the court mandated expense area. So, it looks a little healthier than the other one, but again, this will be addressed in the rebalance that we're requesting in February.

The pilot project, spending according to projections, it's mostly staffed, and again, we have the three offices in the Salem, Portland, and Medford area. Appellate Division, this is showing a bit of an overage due to the fact that there was a wage issue from 2021 that was settled for the employees, which increased our expenditures there. And we are aligning building lease payments for our Court Street building to be in the correct budget area. We will be looking to rebalance some funding from ASD and other areas to cover this overage. Compliance, Audit, and Performance is spending as we planned for it to spend. There's some savings due to vacancy savings and other non-professional services that have not been spent at this time. Administrative and Executive Division, again, they are spending in accordance with projections. There's vacancy savings, there's some payments that have been saved because of non-recognized professional services and such. But again, this is a pretty healthy area of the budget.

Financial/Case Management System, you'll get a more detailed report on this later in the commission meeting, but the savings that are shown here are due to

the phase of the project and not having any expenditures for vendors at this point as we go through the RFP and everything else at this point. So, we're just mainly administrative expenditures due to the internal workings of the project. Special contracts and programs and distributions, this is mainly discovery. Right now, the contract that's through here is for guardianship and it's on a 124 basis. So, that's going as it should go. Discovery payments are being paid as they're received. Again, we did address this in our rebalance to try and backfill some of the money to cover whatever we can for projected expenditures with discovery. But again, once we run out, we run out at that point.

And lastly, you'll see the agency overall, across all divisions, is showing a healthy budget overall. We will be requesting a rebalance in February to move agency funds to cover overages across the board. That was submitted to LFO last week and is working through its processes at this point. And that concludes our budget presentation. If there's any questions, I'm happy to answer them.

Chair Jennifer Nash: Does anyone have any questions? Mr. Amador, the only question or maybe comment I have is that maybe given the current climate with the federal government, we shouldn't be planning on receiving any reimbursement for any funds from them, at least in the foreseeable future. The question then is, how are we going to address that potential shortfall, which is kind of over and above what we originally anticipated with the rebalance?

Ralph Amador: Thank you for the question, Chair Nash. We have been in direct communications with Oregon Department of Human Services about that very thing. Once we got the notice, the first thing I did was get on the phone and call them rather than email them to talk about that. The funds that we're talking about are IV-E foster care funds that have not been affected because they're entitlement funds at this point, but we are monitoring that specifically. We're getting the payment for the last quarter of 2024. We're hoping to expedite the payment for this first quarter going forward and we're in communications with that. Again, if we can't get the payment, we'll be talking with LFO to try to figure that out, but again, that's beyond our control. But we are, our pulse is on the thumb of that. Our thumb is on the pulse of that, not our pulse on the thumb. But anyway.

Chair Jennifer Nash: We understand. All right. Thank you. Thank you very much. And thank you for your information. Very much appreciated. All right. All right. We have two action items coming up, which I'm going to try to get done before 10:30 because we're going to lose one of our voting members temporarily at 10:30. So, let's move on to the next item, which is approval of the OPDC Strategic Plan. We have seen this before. There was some direction that the commission gave regarding some revisions, and those revisions were made, it was sent back to us. I turn it over at this point to Director Kampfe and Moss Adams for presentation of the final plan.

Jessica Kampfe: Thank you, Chair Nash. I don't see Moss Adams here right now, which is surprising. So, we are messaging Jessie Lenhardt right now to see if we can figure out what's going on. Is it possible for the commission to take the second action item first and move forward with the qualifications piece?

Chair Jennifer Nash: Yes, that would be just fine. All right. Then moving on to the core staff role definitions, qualification standards, and performance standards. This is a document that we saw last month, we had a briefing about, and I'll turn it over to Ms. Flowers to discuss.

Shannon Flowers: Thank you, Chair Nash, Vice Chair Mandiberg, members of the commission. For the record, Shannon Flowers, trial support and development manager with the commission. As you said, we brought the core staff role definitions, qualification standards, and performance standards before the commission at its January meeting for a briefing. I don't think the commission had a lot of questions at that time, but just by way of background, actually, Mara, do you have the slides that you can pull up? There we go. If you want to skip to the third slide. Just by way of, again, a little bit of background, a reminder.

These qualification and performance standards for core staff roles are really part of sort of a foundational piece of work that agency staff has been working on to align with our vision to be a champion for public defense services, for effective defense services. It is part of the larger body of work that the agency is engaged in related to implementing the legislative directives provided in Senate Bill 337 from 2023. Next slide. And our recommendation is that the commission adopt these core staff role definitions, qualification standards, and performance standards as one portion of the agency's overarching Quality Management Plan for Public Defense Services with an implementation date to be determined at a later time. And again, I'm happy to answer any questions that the commission may have at this point or at least attempt to do so.

Chair Jennifer Nash: All right. Are there any questions regarding the core staff role definitions, qualification and performance standards that were presented during last month's meeting?

Peter Buckley: Madam Chair, just again a comment of thanks to everyone who gave time to this effort. It's a pretty massive effort and looking at the workgroups that focused on each part of it, I just want to express gratitude for everyone who took part.

Chair Jennifer Nash: Agreed. Thank you. Mara, can we take the slide down so that I have a – thank you – have a better view of everyone? All right. Is there a motion to adopt the core staff role definitions, qualification standards, and performance standards

as one portion of the agency's overarching Quality Management Plan for Public Defense Services?

Peter Buckley: So moved.

Chair Jennifer Nash: All right. Commissioner Buckley moves. Is there a second?

Susan Mandiberg: Second.

Chair Jennifer Nash: Commissioner Mandiberg seconded, and we will need a roll call vote.

Mara Hoaglin: Good morning, commissioners. Can you hear me?

Chair Jennifer Nash: Yes.

Mara Hoaglin: Thank you. Okay. Commissioner Nash?

Chair Jennifer Nash: Yes.

Mara Hoaglin: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Mara Hoaglin: Commissioner Lipscomb? Got it. I saw you say yes. Commissioner Buckley?

Peter Buckley: Yes.

Mara Hoaglin: Commissioner Harris?

Robert Harris: Yes.

Mara Hoaglin: And Commissioner Lininger?

Tom Lininger: Yes.

Mara Hoaglin: Thank you very much. That passes.

Chair Jennifer Nash: Thank you. All right. And with that...

Jessica Kampfe: Chair Nash, we received a correspondence from Scott Simpson that they don't have access to the presenter link. So, I think they're watching along with our meeting right now, but having a difficult time getting in. Mara, have you been able to resend them the link since that message came through?

Mara Hoaglin: I know that Mona has been working on that in the background, so I'll assist her, and we'll get that done real quick.

Chair Jennifer Nash: In the meantime, to streamline that a little bit, I hate to sort of jump the gun, but were there any questions or comments about the Strategic Plan? The draft that was sent to us earlier in the weekend was included in the commission materials. Do any commissioners have any questions, any comments? All right. It doesn't sound like it. I will say I really appreciated, when Commissioner Smith sent her email tendering her resignation, I thanked her for her contributions to the commission and particularly to the Strategic Plan. You may recall when it was last presented to us, she had some really specific ideas about how that should really include a lot of our work through an equity lens and worked very closely with Moss Adams, with the Governor's office, with other folks to kind of get those changes implemented in our Strategic Plan. And it was very nicely done, I really appreciate it, especially with the current climate that we're experiencing, I think it's important that we reiterate our commitment to diversity, equity, inclusion. I think those are qualities that are particularly important in the work that we do, and I thought that the changes that were made were very helpful. And also updating the information as we suggested.

The one other thing that we're going to need to do is we're going to need to update the commissioner listing for when we pass this today. Because we have Commissioner Lipscomb replacing Commissioner Selander, and then we don't have Commissioner Parrish Taylor and Commissioner Smith. And I see Ms. Lenhardt on the video at this point, so I'll turn it over to her.

Jessie Lenhardt: Thank you so much, Chair Nash and members of the commission. Jessie Lenhardt with Moss Adams, for the record. I was switching meeting links, so I heard all of the nice things that you had to say, Chair Nash. Thank you so much and can absolutely make those updates to the commissioner list. I also heard that there weren't any questions from the commission or comments on the updated Strategic Plan. I have a brief presentation that I'm happy to walk you all through, that talks about the direction that we left off from in December, the folks that we reached out to, and then just an overview of the updates. I'm happy to do that. And I see some nodding.

Chair Jennifer Nash: I think that makes sense for members of the public, so everyone understands the process.

Jessie Lenhardt: Fantastic. Okay. So, we left off in December, there were two kind of primary areas of focus for updates in this next iteration of the plan. Number one was really emphasizing the criticality of the unrepresented persons crisis, making sure that that was highlighted with some stronger language, and then a review of that goal to make sure that the action items were really focused on both

meeting near-term needs, but then also thinking ahead to some longer-term needs. And then the second one was kind of as discussed previously, reviewing the plan holistically to really strengthen representation of DEI throughout the plan.

So, from that conversation and direction, we did a couple of things. So, we wanted to make sure that any updates that we proposed or kind of thought through were inclusive of kind of information and feedback from the commission itself. So, we met with Commission Member Smith to talk through her specific ideas. She also got us looped in with some folks at the Governor's office, so we had a chance to meet with the Deputy General Counsel. We also internally circulated the plan to a couple of Moss Adams employees who are certified in DEI and do this as a practice as well to get their feedback and thoughts on opportunities to strengthen DEI throughout the plan. And then we also circulated the plan for review through the Department of Administrative Services through two offices. So, the Office of Cultural Change, who have been really great partners with OPDC since December as well, and then also the Strategic Initiatives and Enterprise Accountability Department. And so, that group and the Strategic Initiatives folks are the ones who review all state plans comprehensively. So, now that OPDC is under kind of the Governor's office and Department of Administrative Services, wanted to make sure that if we're making updates, we are capturing all the updates and all the kind of requirements and the things that they might be looking for as well in the plan.

So, for the unrepresented persons crisis, the overview of updates. So, number one, we added an additional activity that was focused on securing the necessary funding. We know that this is going to be an ongoing conversation that may change over the next six years. And so, making sure that that is represented as an activity was important because the state of public defense, the service delivery model, hourly rate adjustments, all those conversations need to happen on a recurring basis. So, making sure that we're including and representing that as an activity.

Then we refined the activity that was focused on recruitment through alternative career paths. And so, the goal here was to think about all of the creative ways that exist now but could exist in the future in six years that OPDC could tap into to really broaden its labor market, get more access to people who might be entering the public defense profession. So, thinking about the whole pipeline of people who might be interested in becoming lawyers, to retaining folks who are public defense service providers. And I should say, not just lawyers, but also investigators, paralegals, other folks that are part of kind of comprehensive public service defense delivery. And then the last one was to really make sure and do that review to balance the activities, to see and make sure that there are some activities that are focused on near-term opportunities.

What could OPDC take advantage of now? And then what are some that might need a little bit more planning and could be realized into the future?

The second area of updates, really... So those updates focused on goal one. This next batch of updates really focused on strengthening DEI throughout the plan. And so, again, we really wanted to make sure that inclusion of DEI and updates to the language weren't performative. It wasn't something to include just for the sake of including it. And so, what we did was evaluate the activities and see whether or not being more specific about what equity and inclusion and diversity looks like and how that could alter outcomes and improve any kind of client outcomes or kind of outcomes for the agency as well. So, the other way that activities were also reviewed is where DEI could foster greater equity and inclusivity while aligning with the mission, vision, and values of the agency. This is also a really big area of work and so we want to make sure that the plan is cohesive. And so, thinking through the values of kind of high-quality service delivery, high-quality representation, values around diversity were represented throughout the plan and included in any updates.

And so, when we look through all of the updates that were provided, they can be kind of grouped broadly into the following four categories. Number one really was looking at how individuals from diverse backgrounds are included in planning and soliciting feedback. So, making sure that the agency is able to be thoughtful about who it's reaching out to when new initiatives are coming up or when changes to policies or technology take place, making sure that there's intentionality around who is being engaged in those conversations. The next one is prioritizing equity during implementation. And so, what this looks like is being also more specific about the ways in which change is implemented for any kind of new initiative, new policy, updates to the service delivery model, anything that is happening now and also into the future. So, what this really looks like is kind of improved communication tools, making sure that information is accessible through a variety of different media. So, it could be town halls, or it could be focus groups, it could be written documentation, making sure that any documents are accessible, available in other languages as applicable. Again, really kind of to make sure that communication and implementation can happen in a really thoughtful way and in a way that can reach a broad group of folks.

The third area is to address gaps in training and support that is offered to providers. So, again, being really thoughtful, and this also connects to point number one, being thoughtful about engaging folks from across the state and from across the spectrum of public service defense delivery – paralegals, investigators, social workers, case mitigation support specialists, in addition to attorneys – to think through and get feedback on what training is working well, where might there be some gaps, and how could that be improved, again, to

make sure that any kind of future efforts are inclusive of kind of the array of perspective and needs from providers. And then the last one really is to improve service delivery by reducing bias and enhancing accessibility, particularly for historically marginalized groups, with the focus on improving client representation. And so, those were kind of the pieces and updates throughout the plan and how they could be grouped together.

So, now you have kind of an updated proposed plan. I heard and have on my list to update the list of commissioners. The last set of updates that I will say that the plan includes is an appendix. And so, this was part of the criteria that was important to have represented as part of now, it being kind of the agency falling under the Department of Administrative Services and the requirements for strategic plans in that office. So, the appendix includes kind of the strategic planning process overview. So, the process by which folks were interviewed and engaged kind of from across the state and different groups within OPDC, the commission itself, state offices, and also the public. It also includes a list of supportive plans. So, the Strategic Plan is one plan that is meant to kind of be the umbrella of a lot of other plans that the agency has in place that might be more specific or targeted to certain things. So, we didn't want to disrupt any of those other plans that are in place. So, I think in the last commission meeting, Director Kampfe mentioned that the office recently submitted an Affirmative Action Plan. So, wanted to account for all of those other plans, including that one, that work together with the Strategic Plan holistically.

And then the last part was kind of an annual reporting process. And so, what does it look like to review the plan on an annual basis, go through and actually put some measurements and do the data gathering to report on those performance indicators, to measure trends and progress, flag any areas where maybe performance didn't meet expectations or where there are differences? Again, in order to kind of inform decision making, understand where there might be barriers, be able to highlight and communicate successes, and then think about how all of that planning needs to be more detailed in annual operating plans that connect back to the Strategic Plan. So, that encompasses kind of the batch of updates that you can see in this latest iteration, and I will turn it back over to you all. Thank you so much.

Chair Jennifer Nash: Thank you. Are there any questions or comments for Ms. Lenhardt? Commissioner Harris. We can't hear you, Rob.

Robert Harris: Sorry about that. That was a nice, concise presentation. I appreciate that. So, I have the red line version. Are the red lines, does that show all the track changes that you made since our last presentation on this?

Jessie Lenhardt: It shows where the activities were updated.

Robert Harris: Okay.

Jessie Lenhardt: So, you will not see the track changes in the appendix. The appendix is wholly new. And so, there was an effort to make the document still readable. So, the track changes do include the additions and revisions to the plan.

Robert Harris: Okay. So, the only comment I would have, and maybe you may or may not want to respond to this, but I do recall us having a discussion about in the unrepresented crisis should be highlighted and maybe it should be something more than just, "Let's finish our six-year plan." I don't necessarily see any new strategies here and maybe I'm more concerned about tactics than strategies anyway, and I don't expect you to put all the tactics in here to do this. But are there any new strategies included here that I've missed from the last iteration of this plan for the short-term addressing? Not the long term because I think we've addressed the long-term plan here, the six-year plan, but for the short-term thing that we're immediately concerned with. Thanks.

Jessie Lenhardt: Thank you so much for the question. We added the tactic right at the top to secure additional funding to make those funds available to engage current providers. I remember that as part of the discussion that we had back in December was really thinking about what potential providers are out there that could be engaged on an immediate basis that the agency might not be able to contract with right now just because of funding constraints currently. So, that was one way to kind of think about how to make funding available to reach out to your current provider base, but happy to discuss and kind of think through any other tactics or strategies that would be important to include.

Robert Harris: Well, I appreciate that. And yes, it always would be good to get more funding, but I could see how that would help continue a THIP program or increase payments to contractors or increase new FTEs or slots or new attorney bodies in there or other support providers. So, I understand that that's maybe more of a lift that up to the top part. Funding is important, even in the short term. So, thank you.

Jessie Lenhardt: Yeah. I will also say the fourth bullet, implementing targeted recruitment strategies, I would say, is one of the more immediate things that the agency could do. So, in addition, funding will be what it is. It's not always within the commission or the agency's control to determine the funds that you do get. You've got to balance it against a lot of different priorities. But one of the things that the agency can do in the near term is really develop some of those targeted recruitment strategies in order to start building the network, building the relationships, getting the lay of the land, reaching out to providers across the state in order to start those conversations because recruitment can have a

longer time horizon. So, starting earlier rather than later can at least get some of those conversations going, which can be really helpful.

And then I would say the last thing I would mention is thinking through some of those retention strategies. And so, a lot of those are included in kind of hourly rate assessments, thinking about ways in which the agency could provide supportive training. I know the commission has also talked about workloads, really making sure that that is an ongoing part of the conversation, and that provider feedback is solicited through that because we know the fast lane to burn out is through persistently high workloads and so being diligent about being able to monitor that. I would say those are some of the three things that the agency could adopt in the near term to address the unrepresented persons crisis. And I know that Director Kampfe gave an update also on that kind of at the top of the meeting as well. Thank you.

Chair Jennifer Nash: That's very helpful. Thank you. Are there other questions or comments? All right. With that, is there a motion to adopt the Strategic Plan with the one update to make sure that the current commission is designated on the Strategic Plan?

Robert Harris: Commissioner Harris so moves.

Chair Jennifer Nash: And is there a second?

Susan Mandiberg: I'll second it.

Chair Jennifer Nash: All right. And we need a vote.

Mara Hoaglin: Thank you. Commissioner Nash?

Chair Jennifer Nash: Yes.

Mara Hoaglin: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Mara Hoaglin: Commissioner Lipscomb?

Paul Lipscomb: Yes.

Mara Hoaglin: Commissioner Buckley?

Peter Buckley: Yes.

Mara Hoaglin: Commissioner Harris?

Robert Harris: Yes.

Mara Hoaglin: And Commissioner Lininger?

Tom Lininger: Yes.

Mara Hoaglin: Thank you That has passed.

Chair Jennifer Nash: Thank you very much and thank you again for your very hard work and contribution. We really, really appreciate it.

Jessie Lenhardt: Thank you so much.

Chair Jennifer Nash: Oh, Commissioner Wright?

Jasmine Wright: Yeah. I just wanted to say to Jessie and Moss Adams, I felt like in December, I didn't feel like Moss Adams had really sort of done a full and complete job of developing that plan, but I want to say that with what you have presented us today, I feel like you have listened to what the commission has given you, and I feel like you have done a full and complete vetting and that you really have looked at all the potential options and you've given us a full and complete plan here. So, I really want to thank you for what I think is a really comprehensive plan and doing a good job at this point. So, I really do think that this is a very good and comprehensive plan that we can all get behind. So, thank you so much.

Jessie Lenhardt: Thank you for those kind words, Commissioner Wright.

Chair Jennifer Nash: All right. And we're going to take a big step backward for a moment, and that is that Ms. Wilson wanted to give public comment. There was a misunderstanding, and she didn't get the link sent to her and she is now on. So, I want to give her her three minutes of public comment that we missed at the beginning of the meeting. So, with that, Ms. Wilson, please begin. Thank you for your patience with our technical issues.

Shannon Wilson: Thank you, Commissioner Nash and members of the commission, Director Kampfe. Sorry to interrupt the flow. I am Shannon Wilson; I'm the director of the Public Defender of Marion County. Prior to being the director here at the Public Defense Office, I was at the consortium in Clackamas County. And I wanted to speak to the commission today about three things in particular. Number one is the numbers and information contained in the dashboard.

Number two is the attrition that we've had in Marion County. And number three, I would like to briefly touch on protected leave for public defenders.

So, I wanted to flag for the commission the flaws that are apparently still in the dashboard. Right now, it shows active attorneys at PDMC of 25 and that 11 attorneys have left. Maybe this is a fortune being told, and I would love to have 25 active attorneys. We do not, unfortunately, have 25 active attorneys, and we actually have had since the start of the contract 16 attorneys leave, not 11. So, right now, the dashboard shows that our utilization rate is around 60%. However, this number includes attorneys that do not work at PDMC and includes attorneys that have left our office and are now working at the State Trial Division. When we look at attorneys that are not working at PDMC, the utilization rate is 36%. Looking at the utilization rate of currently employed active attorneys at PDMC, the utilization rate jumps to 76%. So, I'm asking the commission to please look into this and to use uniform standards and reporting requirements for all data that is being used in the dashboard. Right now, we have the dashboard using entirely separate standards for different providers. I would also ask the commission to inquire as to whether or not the agency has independently reviewed or has the ability to independently review this data to check for integrity, accuracy, and uniformity, and to do so prior before publishing that information publicly.

As far as attrition, two major things happened in Marion County. One was court-enforced appointments. The other was the opening of the State Trial Division directly upstairs from our office. We lost our two most experienced investigators. We lost a highly experienced bilingual legal assistant and also five attorneys to OPDC. We just can't compete with the higher salaries or the lower workloads available at the State Trial Office. And fortunately, with these vacancies, we only lost one attorney position permanently from our contract because we weren't able to fill it in time.

The last thing I want to touch on is protected leave for public defenders. Nonprofit offices, like all employers, must honor our employees' right to protected leave for serious health conditions, pregnancy, parental leave, bereavement, military family leave. We must do so under state and federal law. However, under the current policies with OPDC, full-time employees who take protected family medical leave are subject to being removed from our contracts, leaving employers with unfunded obligations to their employees and further skewing the dashboard reports. Right now, I don't believe that there's a policy that addresses when an employee or a public defender takes protected leave or comes back from protected leave, and I'd ask that the commission look into this. I think it's unnecessary. It creates a lot of uncertainty for us nonprofit public defenders. Excuse me.

Chair Jennifer Nash: Thank you, Ms. Wilson. And thank you for your comments. They are very helpful.

Shannon Wilson: Thank you.

Chair Jennifer Nash: So, thank you. All right. So, welcome, Commissioner Harvey. It's very nice to see you. Glad you could join. And let's move on to the briefing on the attorney qualification standards.

Shannon Flowers: Thank you, Mara. Chair Nash, Vice Chair Mandiberg, members of the commission – Shannon Flowers, trial support and development manager with the agency. So, a little bit of background on the attorney qualification standards. I believe, as you all know, ORS 151.216 sets out sort of a long list of responsibilities that the commission has, and among those is that the commission is to develop, adopt, and oversee the implementation, enforcement, and modification of minimum standards to ensure that public defense providers provide effective assistance of counsel consistently to everyone that's eligible for public defense services. The agency has had attorney qualification standards, or standards for attorneys to qualify for appointment to represent financially eligible persons. Those standards have largely remained unchanged since the 1990s. So, Mara, next slide. In November of 2024... Actually, sorry, can you go to the next slide, Mara?

The agency convened four workgroups to assist in developing qualification and performance standards for public defense attorneys. Those are organized around the major public defense practice areas – criminal, juvenile dependency, juvenile delinquency, and then what we've started referring to as quasi-criminal, so post-conviction relief, habeas cases, and civil commitments. I think there are a few other things that got captured by that group as well. And again, our resource council facilitated these workgroups and really did an excellent job of bringing people together. Next slide.

This is just a high-level overview of the categories of qualification standards that have been developed so far and are before you today. I won't go through in detail all of those, but overall, the major changes or differences in these newer qualification standards are requirements for specific types of experience. So, right now, the current qualification standards that the commission uses are really focused primarily on having a certain length of time doing particular kind of work or observing trials or court appearances in certain types of cases. And so, this is really a move in the direction of looking at the types of experience that people have and bring to the work, such as a specific number of trials or types of motion practice, really looking at people's experience litigating and how prepared they are and able to do the work that is needed for the particular types of cases that they wish to handle in public defense.

Another big shift with these qualification standards will be requirements for training when it's developed and available. So, that's a future sort of piece of the work. But the standards currently incorporate training where the groups believe that that was really appropriate to do so with an eye to the future. And then, finally, calling out specific types of practice, of cases or practice areas that have developed over the last 30 years or so, the current standards don't really address, such as Measure 11 and Jessica's Law cases. One thing, too, with the focus on really looking at each practice area and what it really requires to be have the skills, training, and experience to do the work that is needed, and also looking at sort of the system as a whole and how do people get into the system and then move up, advance in their skill and ability to handle more challenging types of cases.

In particular, one of the areas that the standards, I think, look different is for juvenile dependency cases, and that really developed in response to a recognition that dependency practice is really different and doesn't lend itself to the kind of entry level and then advancement through qualification levels to handle more difficult or serious types of cases. And so, there's really two levels or categories of standards called out for juvenile dependency cases, and that's the sort of standard initial phase dependency case and then termination of parental rights. But the way those standards are put together is really looking at the different types of skills that are needed and acknowledging the fact that someone could have experience that really satisfies parts of those standards, but not all, and sort of trying to make it as flexible as possible and really meet the needs of the community and people doing the work. And just recognition of the uniqueness of dependency practice within the public defense sphere. Next slide.

There's still work related to attorney qualification standards that's needed. So, we still need to develop qualification standards for appellate representation. These standards don't address appellate representation at all. They're focused entirely on trial-level representation. Part of that is just prioritizing the work. We have our Appellate Division that handles the vast majority of appeals in the state, and that functions relatively well. So, while we do need to work on standards for appellate representation, that has been sort of set aside for the future because it's just not the highest priority at the moment, although still is important.

And then aggravated murder and aggravated murder post-conviction relief cases, contested adoption cases, and then blanket waivers of juvenile court jurisdiction and delinquency cases, which is an area basically carved out for traffic, boating, hunting, and fishing offenses where a youth is involved, where essentially the presiding judge in a jurisdiction can set an order saying these

types of cases automatically go before the criminal court rather than the juvenile court. And then also policy and procedure for submission, review, and certification of attorney qualifications, including provisional certification and certification through equivalent experience and with supervision. That is work that is already underway, as well as with the standards for aggravated murder and aggravated murder PCR. Those are still being worked on and may be part of the presentation for the commission when these come back for a vote, which I believe is planned at this point for the April meeting.

Chair Jennifer Nash: All right, Commissioner Mandiberg.

Susan Mandiberg: Hi, I really like what I'm seeing so far. I think it looks like the workgroup has done a great job and you have managed to articulate the findings very well, so thank you. I have a question about the minimum qualifications for a Criminal Attorney 1, so when we get past everything they need to review and be familiar with. I can see having different minimum qualifications for people who have done some criminal cases as certified law students, and I definitely like seeing alternatives for people who may not have had that opportunity as law students. A couple of different questions. Number 3(a)(i) talks about represented clients in criminal cases as certified law student under the Oregon Supreme Court rules. That would seem to leave out recruiting people from law schools in other states. So, if people have gone to law school, let's say in Virginia, and they've appeared in Virginia criminal courts under whatever rules the Virginia Supreme Court might have for that, if those rules in the other states are similar and the supervision and everything goes along with it are similar to rules in Oregon, I would think it would be prudent for us to have the flexibility to be able to let people qualify under those rules from other states. And part of the reason I'm saying that is, as we know, the public defender offices, like MPD, recruit widely from all around the country, and it would be nice if these people who came in could hit the ground running, even though they went to law school in some other state. So, that's number one.

Number two, for the alternatives for people who may not have had the opportunity to be certified law students, I think it's great to have the alternatives. I think they make sense. My question is, how long it will take someone who comes in under (b), (c), (d), or (e) to qualify to be a Criminal Attorney 1? So, let's say a Trial Division, or let's say a contracted nonprofit, hires somebody who hasn't had the opportunity to be a certified law student. Will it take them a couple months to qualify to be a Criminal Attorney 1 under these rules? Have we thought about how that employer will cover, I assume we're still going to be operating under MAC since that seems to be what's currently the proposal, how will that employer cover MAC if the person is taking a couple months to qualify? Will we be altering our contract provisions to deal with the time it takes for the person to qualify? All of those questions occurred to me in

terms of the amount of time that it would take to do this. And if we haven't come up with a way to deal with payments and assessment of utilization for that period of time, it seems to me that that creates a disincentive for people to hire new lawyers who have not been certified law students. And so, I wonder if we really want to incorporate that kind of disincentive into this plan. So, those are my observations. Thank you.

Chair Jennifer Nash: Thank you. Commissioner Lininger?

Tom Lininger: Did Ms. Flowers want to respond first to anything that Commissioner Mandiberg said? I have very similar comments.

Chair Jennifer Nash: I have questions, too, so fair enough. Thank you, Ms. Flowers.

Shannon Flowers: Thank you, Chair Nash, Vice Chair Mandiberg, and Commissioner Lininger. So, probably part of what I should have fleshed out a little bit more in the slides and sort of what I said initially is how people qualify, what that process will look like, at least at a high level. Because we're not shifting away dramatically, I don't think probably, from the process that is currently employed with one caveat that I'll explain a little bit. Right now, people qualify to handle various types of cases under the standards in three different ways. They meet the face of the standards, we review what they submit to us, they sort of meet all those standards for whatever types of cases they're seeking to take, and we approve them and they're off to the races.

There's two other ways, though. One is through equivalent experience and qualifying with supervision. And so, those are the policies and procedures that I talked about just very briefly that are under development at this point. We're already working on those things and they're really critically important. And so, we intend to retain, I believe, that type of process for reviewing. And so, the standards that are before you in draft form right now sort of contemplate that. So, somebody that's coming in from out of state very likely isn't going to meet the standards on their face, but probably would under equivalent experience, barring substantial differences in practice between states. So, that would be one way.

The other way would be with supervision. You have an attorney who's sufficiently qualified, who's agreed to supervise your work, and that can go on for a period of time to make sure that somebody that's new to practice generally or new to a particular type of case, make sure that they have somebody sort of looking at what they're doing and providing support to them as they handle a new area of law or new type of case. And then the other piece that we don't currently have, but we have talked about to some degree

internally and really with sort of advice and consultation from the Sixth Amendment Center has been around provisional certification.

One of the things that we have been very mindful of and remain mindful of as we move through this work is that we don't have enough attorneys to do public defense work in this state, and we don't want to implement standards that then make that problem worse. And so, if somebody is unable to, doesn't want to attempt to meet the standards through, for example, equivalent experience or supervision, probably supervision in particular, we're looking at developing some standards around provisional certification. Which essentially would allow the agency to say, "You don't meet every one of these standards set out to handle this type of case, but we feel, looking at what you've submitted, you're close enough." We can provisionally certify you for a certain amount of time with direction to meet these other standards and what needs to be done to meet those standards so that somebody would be qualified. If they got to the end of that provisional certification period and hadn't met those standards, then that would be an opportunity for the agency to sort of pull back that certification and say, "You're not ready to do this type of work," potentially. I'm not sure, hopefully that answered the questions sort of generally that commissioners have about sort of what it will look like.

Chair Jennifer Nash: I think so. I mean, my concern, it sounds like, I mean, just kind of echoing others, I mean, I read this, and I was like, well, nobody who graduates from law school is going to meet Criminal Attorney 1 standard. So, is there a zero or is there a under supervision or is there a...? I mean, it seemed almost like the 1 should be a 2 and go from there kind of thing. But so long as when we adopt these, we... I mean, I would feel much more comfortable adopting these, when we do, with the supervision standards at the same time, so that we're sure that it's clear that as long as you have an adequate supervisor, you're qualified to accept these appointments. Because I think it also poses a contracting problem as well. How do contractors get compensated for hiring attorneys if they don't meet the standards that we've set forth? Commissioner Lininger.

Tom Lininger: Thank you. And once again, really appreciate the effort to record all these standards. And I was zeroing in on the same portion of the standards that Commissioner Mandiberg addressed in her comments, and I think that's what you get when you put law professors on a commission like this. I suppose Commissioner Mandiberg and I are both trying to think about where best to draw the line where we maximize eligibility among worthy law school graduates but maybe don't credit as sufficient certain experience that law students may have that doesn't really translate into practically valuable background. So, a couple of things caught my eye. By the way, strongly share Commissioner Mandiberg's suggestion that we don't limit eligibility to people who practiced as students pursuant to the Oregon Supreme Court's rules. So, at the top of page

42, as I was looking at the one alternative ground for prior clinical work, it struck me that six months is kind of a high bar. I think that just based on what I see at the University of Oregon, I think that a student would be sufficiently qualified to handle the category of cases you can handle as a level 1 practitioner if that student just did a one-semester clinic, so a three-month clinical experience.

Another thing that struck me at the other end of the spectrum is I'm not sure why we're crediting prior work as a judicial clerk as adequately preparing someone to represent clients. I think there's a lot you miss as a clerk. First of all, it's not clear you're always in the courtroom, right? But you don't have those client interactions. So, I guess I would make the eligibility pathway through clinical work a little more generous and maybe not make clerkships a way to qualify as a criminal 1 attorney. And then one last thought is, and I realize other commissioners have talked about the need to dovetail these standards with those for supervision, but I might like to see recorded here how a certain quantum of criminal work as a candidate for the SPPE would be sufficient since we're just kind of listing what pre-lawyers can do that qualifies them to be a Crim 1 certified attorney. It seems like one of these subpoints ought to say if you've been subject to supervision as a candidate for the SPPE, I mean, we're now paying for that, both for the supervisors and the students, that that alone should be sufficient.

And then I guess I'll point out one other nitpicky thing. It seems striking to me that only sub (a) at the top of page 42 requires a letter from the supervisor. Whereas if you simply clerked, there's no additional affirmation needed of your fitness to be a criminal defense attorney. I know that clinical supervisors have a lot of work to do, and it just struck me as a little incongruous that that was the one instance among these subpoints where we needed a supervisor to say, "Yeah, this one's good enough." So, maybe a minimum grade in a clinical class or something like that. But again, I share your goal to have a big pathway, but also one that protects clients. I just think I'd make a few changes along the lines I mentioned. And thanks again.

Chair Jennifer Nash: Thank you very much. Commissioner Harris. You're muted.

Robert Harris: Just one comment on this particular issue. I've hired people for years doing this work. Some were experienced, some were right out of law school, some were CLS's, and yes, there was always some hoops to jump through. You called up the agency. They said, "Yeah, it sounds good." They knew we had decent supervisors. If you look at section (c), I think it is, "Has served as co-counsel in at least five criminal cases, including attendance and court appearance and client interviews." I'm assuming that's start to finish, not just you've got on the case. And that was sort of the one we always hung our hat on because we would just make the supervisor co-counsel on a caseload, or partial caseload usually, and

within a few months, they would have closed them all. So, I would offer as a possible suggestion here, and I think a lot of lawyers, law firms like mine, use that particular section. You would just give a provisional approval as long as a supervisor, authorized supervisor, mentor, whatever you want to call it, affirmed that they would be able to meet this qualification within three months. And that would allow people to hire folks right out of law school. We'd have Joe or somebody would sign on as a supervisor, they'd sign on co-counsel on most or all their cases, all their cases, I guess, or most of them, allow them to serve on most of them. Because they would have their conditional approval right there, co-counsel on five cases, at least five, and they would make sure that they were handled correctly, do it within three months, we don't have to reinvent the wheel.

Chair Jennifer Nash: Commissioner Mandiberg?

Susan Mandiberg: Yeah, I'm a little concerned, and maybe I didn't understand what you said exactly, Shannon, but about the provisional certification, and then giving them whatever it was, three months to complete the remaining standards that they hadn't met. Is there some ranking of which standards are focal and which standards are more peripheral? In other words, is there a ranking of importance in those standards in terms of which are the most crucial for competent representation? So, assuming that it's not just a supervisory thing, as Rob was suggesting, if the provisional lawyer level, criminal level 1, is representing somebody during those three months, how are we ensuring that that representation during the provisional period is competent?

Shannon Flowers: Thank you.

Susan Mandiberg: I'm sure I missed it, but if you would reassure me, thank you.

Shannon Flowers: No, so that is one of the areas, Vice Chair Mandiberg, that the agency needs to focus on developing policy and process for how we actually will approach that provisional certification. I don't think we've figured out the time frame that would apply, or if it would be the same in every situation where provisional certification is made. And I think part of what is needed is looking at what you called out, and probably the workgroups have talked about it internally, but we haven't talked about it in relation to provisional certification. Are there some standards that are deal breakers? If you don't meet it, you cannot pass go and do this type of work. So, I think that's part of what's needed to develop still is how we'll approach in particular provisional certification, which is an entirely new concept for the agency, but one that I think is needed. And really, I think the workgroups and staff working on the standards have really been focused on sort of balancing sort of two big pieces. One, what does it really take to handle certain types of cases? What kind of skills, experience, training does a lawyer

need? And setting them sufficiently high that we are supporting the elevation of public defense practice across the board, regardless of a particular case type or subject matter area but also trying to balance that against a shortage of attorneys and an intent to not make that situation worse. So, it's two things that I think are challenging to balance, but it is really, I think, one of the sort of overall challenges before the agency at this point. So, I think those are the two big things very high level that the workgroups and our staff have been focused on.

Chair Jennifer Nash: Commissioner Harris?

Robert Harris: Yeah. I think, Susan, that's a good point. As far as supervision, maybe provisional licensees may take a little bit elevated supervision, but I think that there are supervision requirements in the contract that are going to be applicable. So, I don't know if they necessarily have to be in the standards, but certainly they could be addressed. Also, it actually raised another issue with me. Do we have standards for attorney trainers?

Shannon Flowers: We do not currently have standards for attorney trainers, but developing and setting training standards is part of this overarching body of work for quality management for public defense services that is contemplated down the road a bit.

Robert Harris: So, I would suggest, you probably already thought of this, but as you develop those attorney trainers, attorney supervisors, mentor programs, or whatever you want to do as far as professional development standards, and that could certainly be referenced if you have provisional licensees for a period of time. Thanks.

Chair Jennifer Nash: Thank you. I wonder what other commissioners think about adopting standard, I know we're not adopting today, we're discussing, but adopting standards kind of piecemeal because they seem like they're all so interconnected. And I mean, I recognize and understand the idea of trying to get these in place because we need to do that. But on the other hand, it feels incomplete not to have the supervision standards done at the same time that we have the qualification standards, etc. Director Kampfe?

Jessica Kampfe: Thank you, Chair Nash. I will just note that adopting the standards is the first step in a longer process. And so, once the standards are adopted, the agency is going to be working on an implementation plan to implement those standards. So, they won't go into effect on the day that they are adopted. And things like developing the plans for how we do equivalency or under supervision, that can also be part of that longer implementation plan. So, just I want to put that out there for your consideration that adopting the standards is just one piece of the

process. Then we have to figure out how we're going to implement these standards, and that could be over more than one biennium. I don't think that this is going to be a quick implementation.

Chair Jennifer Nash: Thank you for those comments. Do my comments raise any other questions or comments by commissioners? All right. Doesn't sound like it. All right. Well, thank you very much, and thank you for your hard work and for the workgroup's hard work on this. We really appreciate it. And look forward to having these presented to us in future months and the additional standards that I know the workgroup is working on.

Shannon Flowers: Chair Nash, can I say one final thing?

Chair Jennifer Nash: Sure.

Shannon Flowers: It's unrelated to the standards, maybe related in some way. I just wanted to share with the commission that I'm actually leaving the agency. This is my last week. And I'm actually going to the Court of Appeals to serve as senior staff counsel there. But I just wanted to thank you all for the opportunity to be part of this really important work and serve the commission and the public defense community and clients. It's been really great to be part of a lot of important work and engaging with providers over the last few years. So, thank you.

Chair Jennifer Nash: Well, thank you very much, Ms. Flowers, and thank you for letting us know. And thank you for your hard work. We really appreciate it. All right. And good luck at the Court of Appeals. [Laughter] All right. Next, moving on to briefing on attorney contracts. Director Kampfe.

Jessica Kampfe: Thank you. So, this is intended as the beginning of a conversation with the commission about the attorney contracts. As I mentioned earlier in our meeting, the vast majority of public defense in Oregon is delivered through our contracting model. So, this is by far the biggest program that we run to facilitate the appointment of counsel. So, the three programs that we run are first the contracted public defenders, then the hourly program, and then our State Trial Division, which is by far the smallest program that we're running. So, the decisions that are made about how to proceed with attorney contracts really have a huge impact on the delivery of public defense in our state since this is our primary mechanism. With that, let's get started.

So, the commission over the past year has done a lot of work around the adoption of workload standards. And this is work that was directed by Senate Bill 337. So, we were statutorily required to adopt workload standards for public defense. And this commission did so and adopted the National Public Defense Workload Standard that's set forward in the six-year plan. And in order to

accomplish that goal, the commission built out the agency's requested budget with a request for policy option packages that would increase the number of public defenders, stabilize rates for public defenders so that we could start bringing down those caseloads for public defenders in order to meet those national best practices. The agency's requested budget informs the Governor's requested budget. And in the Governor's requested budget, that reflects really a current service level budget for contracts. So, we are not seeing in that budget those increases in order to implement the workload standards, the National Public Defense Workload Standards that were initially drawn out for our contracts.

So, that leaves us in a position of saying sort of what do we do now? And we have a few different approaches available to us for how we're going to move forward with our contracts under a current service level budget environment, which is the environment that we find ourselves in. Next slide. The three things that we can do. So, the current service level budget is built on the MAC model. The Maximum Attorney Caseload Standard is essentially the unit in which we are currently buying contracted public defense. So, because we are not anticipating increases in our contract budget, we could continue with the exact same model because it is the exact same budgetary framework. And I say that, but there are some caveats. While we are not seeing inflation or services and supplies in our current service level budget moving forward. So, there are ways in which it actually is a reduction, a reduced budget for our contracts. So, we could continue with the MAC model as is. We could work with the MAC model to make improvements to that model to update some of the biggest problems that we have heard articulated about that model. Or we could attempt to retrofit the National Public Defense Workload model into our current service level contracts. Those are kind of the three options that we're looking at. Next slide, please.

The first model would be really no change with our contracts. That's the easiest thing for us to implement, but it comes with a lot of costs in terms of the lack of improvements and continuing to move forward next biennium with all of the problems that exist within the MAC model. Next slide. The second option is to try to address some of the problems that have been articulated in the MAC model through policy changes. And so, some of the things that we have heard articulated is that MAC isn't accurately reflecting the ethical capacity of new lawyers, that somebody that just got a bar license and is practicing public defense for the first time is not able to handle 300 misdemeanor cases. That MAC doesn't remove case weight for cases once they go into warrant status. That it is over-counting the case weight for cases where there's more than one lawyer assigned under a co-counsel model. That allowing contracted attorneys to also take hourly cases is converting our contracts into a flat fee model. And that because MAC is a maximum attorney caseload, not a minimum attorney

caseload, it becomes really problematic to use as a forecasting tool when you're trying to say how much of a caseload you're going to be able to cover within a jurisdiction under the MAC model. So, those are some of the common problems that we have heard articulated that we could attempt to address through policy changes within the MAC model. Next slide.

The final option that would be available to us would be to attempt to retrofit the National Public Defense Workload model into our current service level contracts. This could be done one of two ways. The first way would be to take the forecasted caseload, multiply it by the number of hours per case, and then divide it by the number of lawyers that exist within our current service level budget. We anticipate, and it's written out pretty clearly in the Moss Adams six-year plan, that that would result in an expectation that contracted lawyers work about 2,880 hours annually. Were we to take this route, I think there's a lot of lawyers that wouldn't want to contract with us to do that many hours. The other route that we could take would be to take the forecasted caseload, multiply it by the number of hours per case, and then divide by the expectation of annual hours. So, we could divide it by 2,080 annual hours or 1,578 annual hours. That would tell us how many lawyers we need, but we don't have funding in the current service level budget in order to increase the number of lawyers under our contracts. So, we would be acknowledging that there would be an unrepresented person moving forward that was unaddressed within the current budget. And given that it is the top priority of this commission and of the agency to address the unrepresented persons crisis, that model does nothing to move that priority forward.

So, the agency's recommendation to the commission is to seriously consider option number two, looking at policy changes that we can make within the MAC model to address some of the known problems with that model while still working within our current service level budget. Next slide, please. So, I've listed out some potential changes for the commission's discussion and consideration as well as articulating next steps. So, some potential changes to the MAC policies could be to lower the maximum caseload for lawyers in their first year of practice, to apply partial weighting related to early termination, late arrival, and co-counsel cases, to reduce our vacancy funding, to limit the hours that contracted lawyers can bill on hourly cases, and to update enforcement mechanisms for utilization more than 15% below the Maximum Attorney Caseload Standard.

Looking more at that first policy – Mara, could you go to the next slide? The problem that we would be looking to address is that many first-year lawyers can't ethically represent 300 misdemeanor cases. And as a result, contractors who focus on hiring our new classes of public defenders reflect a decreased MAC utilization rate, or they are having to compensate by having other lawyers

in their firm handle more than their MAC standard to make up for the lawyers that aren't able to handle the 300 cases. If we were to decrease the number of misdemeanor cases that a new lawyer is expected to handle in their first year, we think we would have more accurate MAC numbers, our utilization data would improve, but it would decrease the contracted capacity and could increase the number of unrepresented cases, unless that is paired with policies that increase contracted capacity in other places. So, if this was done as a standalone policy, it could create an increase in the number of unrepresented persons. Next slide.

Partial weighting. So, under our MAC model, we currently assign all the case weight at the time of appointment, and we only use partial weighting for cases within the first 30 days of appointment. As a result, one case can end up with multiple case weights assigned to more than one lawyer. So, for example, if a lawyer represents a client for 35 days, they will receive the full weight of that case. If the client then bench warrants after 35 days and goes into warrant status for eight months, and then a new lawyer is appointed, that new lawyer would also get the full weight of that case. And so, we have cases which get double weight counted throughout the system if they have more than one lawyer. This also occurs when a lawyer leaves an office and their case is reassigned to another lawyer in their office, or a conflict develops on the case, and they have to withdraw, and the case is assigned to another lawyer. The flip side of the early termination is late arrivals. Lawyers who receive a case late receive the full weight of that case regardless of where they are in the process. So, it could be that the case has been worked up fairly well, it's relatively close to resolution, but they would still get the full weight of the case. And then another way in which we have cases that receive more than one weighting is when co-counsel is assigned on a case. Both lawyers on the case when we approve co-counsel are able to claim the full weight of that case.

And so, the way that the MAC is currently built, it does allow one case to result in multiple weights if assigned to different lawyers. We could pass a policy that instead gives a partial weighting, so a percentage 50-50, 30-70, something of that nature. The impacts of that would be that less weight would be assigned when more than one lawyer represents a client, and that would increase the MAC capacity in the contracts and potentially reduce the number of unrepresented persons cases. Next slide. OPDC's contracts currently fund vacancies in full for 60 days and then partially fund vacancies for 120 days. What this does is it commits both financial resources as well as position hiring authority to a provider for the period of time that the vacancy remains funded. So, not only does that provider get the money for the vacancy either in full or in part, but also they have permission to fill that vacancy so that we are sort of stuck with not being able to have that vacancy filled by a different provider in another part of the state or even in the same jurisdiction that maybe has

somebody they could hire right away. We could reduce the amount of time that vacancies remain funded or remain available to be filled within a contract. Doing so would be less stable for the contractors. It would give them shorter timelines to recruit for vacant positions and give them less stability around their overhead expenses. However, it could increase the MAC allocation to providers who have lawyers that are ready to take cases and result in a reduction in unrepresented persons cases because we would be more nimble and able to fund people that are ready to go to hire new lawyers and to move those resources to parts of the state where we have a more urgent need. Next slide.

We could limit the ability of contracted lawyers to bill on hourly cases. So, currently we allow contracted lawyers who have met their Maximum Attorney Caseload under the contract to then accept appointment on cases hourly. When they do that, they have to file an affidavit essentially with the agency, a declaration that says, "I can ethically represent this client on this case hourly." Then they can bill against that case. There really isn't a limit on how many clients they can take hourly or how many hours they can bill other than the soft cap limits that exist within our hourly system. The criticism is that that creates a system that at a systemic level incentivizes people to underrepresent their contracted clients so that they have the ability to receive the full payment under their contract and then bill cases hourly. So, restricting the number of hours available would create greater oversight and improve our ability to forecast our budget for our hourly program. However, it would be essentially a cap on lawyers' ability to do hourly work if they were under contract with us. So, we would anticipate that it would reduce the number of hourly cases that lawyers accept appointment on, which could potentially increase the number of unrepresented cases in the system. Next slide.

We could update our enforcement mechanism for contractors under MAC. So, the Maximum Attorney Caseload Standard creates a maximum expectation under the contract, but it doesn't create a minimum expectation. Our contract says that providers who are 15% above or below that maximum for an extended period of time may be subject to reductions in their contract. It's difficult to identify whether or not a contractor has breached their contract because they could be below for a number of very legitimate reasons for a period of time. And then it's also difficult for us to impose penalties under our current contracting structure because the only penalty that's really available to us is to reduce contracted MAC in a contract. So, if a contractor is more than 15% below for three months, we could say, "Okay, we're going to remove contracted MAC from your contract." But that essentially means you're removing a lawyer from their contract or a portion of a lawyer from their contract, which is not the most useful enforcement mechanism when we have a shortage of lawyers practicing public defense in the state. Removing the ability of contractors to have lawyers in our contracts has the effect of exasperating the problem rather than

addressing the issue. So, that makes the penalties that exist in the current contracts very difficult to impose.

We could create a policy that set an expectation that attorneys would accept the maximum number of cases under the contract. That would improve our ability to use the contracts as a forecasting tool to say how much caseload's going to be covered through the contracts. And it would create more accountability under the contracts. It would be easier for us to say, compare one provider to another provider and have equal treatment. However, there's risks associated with this. It could result in higher rates of lawyers leaving public defense if they say these contract maximums are too high and I'm not going to continue to practice public defense at this rate. So, we could result in having more lawyers leave. The end result would be that enforcing the MAC as an expectation would reduce unrepresented cases unless – and it's an important "unless" – unless it increased attrition, in which case it could exasperate the problem. So, there's a lot of unknowns and risks associated. Next slide.

There are actually a lot of other changes that we could potentially consider for our MAC model, and it's important when we think about undertaking this process that we keep in mind that the more changes we try to implement, the greater uncertainty we are introducing. And so, it would be the agency's recommendation to sort of pick the top policies to pursue as opposed to try to do everything at the same time. So, other potential policies. Currently, our contracting is based on attorneys' qualification level. So, whatever they are qualified to take that they are willing to accept appointment on is the level at which we contract with them. That can mean that we are over-contracted for the most serious crime types within a jurisdiction. So, we could change and base our contracting on the qualification level forecasted for each county. We could change our contracts to be based on years of attorney practice instead of on attorney qualification. We could impose caseload standards for contracted investigators. Some of our contracts do have investigators and there is not a caseload standard associated with that. We could fix the universe of MAC that people can contract for.

So, right now, contractors contract for a high variety of amounts of MAC – .98, .72 – so there's just a lot of variety there. We could reduce the amount of variety, and say contractors have to contract for a certain amount. I think the caveat of doing that would be we do have contractors that contract for some amount of criminal and some amount of juvenile and they're in balance with each other. So, they may be doing full-time public defense but under more than one contract because they have more than one practice area. So, we would want to make sure that we were being mindful of not creating problems in a different area of public defense. We could move the caseload reporting earlier in the month. That would make it easier to enforce the contracts if people are

underutilizing. We could remove the contract provision that gives extraordinary case credit for particularly difficult cases. We do not have a similar contract provision that removes credit for cases that are simpler to resolve. And we could implement other changes as identified by stakeholders. I heard Director Wilson today talk about protected leave. That is not an area that we have identified, but we do need to engage stakeholders in a process before moving forward with any of these changes. And so, I would anticipate that that stakeholder process would result in additional suggestions. Next slide.

So, just in terms of process, next steps, timelines, today we're introducing this concept with the commission. Following this meeting, if this is direction that the commission is wanting to go, we will engage in a stakeholder process that will be an internal process. We need to make sure that our contracts have input from budget, data, trial support and development. So, different branches within the agency. We also need to work with public defenders and to get input from people that are on the ground doing the work about how these policy changes would affect them. And we need to make sure that policy changes aren't going to cause disruptions in the courtroom, that they actually work with other parts of the criminal justice system. So, we would want to get feedback from courts and district attorneys about how this would work on the ground. We would then develop draft policies for the commission. We can present those draft policies to the commission either in March or in April. March feels very ambitious, but I'm putting it out there. The commission would then be asked to adopt the policies at the following commission meeting, which would be either the April or the May commission meeting.

And then I put on your radar that our current contracts are set to expire on June 30th of 2025, and we may need to extend them in order to complete this work in a meaningful way. We did do contract extensions for our last contract cycle. That is not without costs, but it is a possibility. Next slide. Okay. I think that's it for my overview. And the hope was that this would be an opportunity for the commission to start talking about contract changes.

Chair Jennifer Nash: So, here's what I'd like to do. We're scheduled to take a break, and I think this is a good time to take a break, and then we can have our discussion after the break. I anticipate there'll be a number of comments and concerns and questions. So, why don't we take a break and we'll be back at 11:20, and we'll pick up the discussion at that point.

[No dialogue]

Chair Jennifer Nash: All right. It is 11:20, we are back from a break. And before the break, we had a presentation regarding possible contract changes that would have an impact on

the unrepresented persons situation. So, are there any comments or discussion from commissioners? Commissioner Harris.

Robert Harris:

Thanks. A lot of these were discussed in our workgroup, I know. So, I appreciate this actual pretty good summary of I think the change that we're most interested. I think clearly, to me, option two is the route to go. The potential changes, I do agree, whether it's the first six months or the first year of a practitioner's career, they should have less than a maximum of 300, it should be more like 75 or 80% of that. They probably should still get paid full amount because they still need to earn that salary, though. Partial waiting and co-counsel, I mean, I'm fine with that. I know there have been some law firms that will say you get 50% when you're assigned and whoever closes the case gets 50%, so that would be a 50-50 credit. So, you get the whole thing, as long as you open it and closed it. They would also encourage as a lawyer to work out any issues with their clients and not just let the client say, "You're fired," and walk away. I'm not saying that happens a lot, but it would encourage lawyers to maintain a good relationship with their clients. Co-counsel, I guess you could do 75%, 75%, that would give you some savings. And there is some savings with co-counsel, but usually they're co-counseled because they are more complicated cases as well.

Vacancy funding, I never quite understood why you didn't cut 40% right as soon as the vacancy occurred, since 40% is about the cost of your employee and you're not paying that employee anything at that point. But you certainly do have to maintain your basic infrastructure and your staffing in anticipation that that seat will become filled. So, I would definitely take a look at redoing that continuation funding. And I guess within 120 days, at some point, if they've decided they are not going to fill that position, then obviously that continuation funding probably should be terminated as well. But I think you should look at immediately withdrawing, or maybe a week or two withdrawing because there may be some severance or something, but at least the salary portion of the lawyer who's left.

Limiting hours on cases, we talked about that at work session. I think that has some merit. I wouldn't be too strict on that because there are some lawyers that want to work longer hours, but there's probably a formula to be had. I think I'm the one that's been pushing that we should pay lawyers based on their years of experience because I think that encourages the experienced lawyers to also take the misdemeanor and C-fel cases, which is where our biggest shortfall is, number one. Number two, those lawyers can probably handle those cases quicker, more expediently than a brand-new lawyer, and that's what they should be encouraged to do. And then they can actually take more cases as well and accelerate the decrease in the unrepresented at the lower-level cases. Because otherwise, you're incentivizing these lawyers just to take the more

serious cases. And also, it wouldn't mean you had to amend the contract every time somebody leveled up. If you said, "Oh, zero to 5 is one level, 5 to 10, 10 to 20, 20-plus," whatever the numbers are.

You wouldn't get rid of the qualifications, by the way. The lawyer would still have to qualify to be able to assign that case, but it's just the pay grade would remain based upon their years of relevant experience. One thing you could consider doing, I think I talked about this some years ago but give a bonus payment to any lawyers that are taking 1.0 MAC that become full-time lawyers. So, that would apply to any lawyer, whether they're a nonprofit or a private bar, just give them a bump if they're willing to go ahead and devote their entire career to public defense. Oh, and the one question I had, are you saying, Jessica, that there's no money for any increase in rates, or is there going to be an inflationary rate, or is it just a zero-sum game for everybody?

Jessica Kampfe: The Governor's recommended budget removes inflation across the entire agency. So, there is no inflation in our contracts or any place else in our budget.

Robert Harris: For state employees as well?

Jessica Kampfe: That's correct.

Robert Harris: We know that hits private bar and public defenders much harder because their costs for insurance continue to go up, their cost for rent continues to go up. So, they're in a negative situation as far as the dollars they're going to have to put into wages. So, that's really not good. The reason I ask is because I didn't know whether just doing a continuation of the current contract would be a good or bad idea. But I guess if there's no dollar increase, I'm not as concerned about it, to push that back a little bit. I'm disappointed about it, but not as concerned about when we get the new contracts done. Those are my only comments. Thanks.

Chair Jennifer Nash: Thank you, Commissioner Harris. So, I first want to acknowledge and appreciate the really difficult position that the executive director is in, in particular, and the agency as a whole. Now that we're in the executive branch, we have a lot of constraints around, and especially the executive director, about what she can advocate for or discuss. There's not as much room to talk about those things. But I feel like this is a real step backward. We've acknowledged as a commission that the unrepresented issue is a symptom of an overall problem, and the symptom of the overall problem is a historic underfunding of public defense for decades, and a great deal of attrition due to high caseloads and low pay. Now, we can talk about all of the small things that have contributed to that, but that's the big, broad overview that I think everyone agrees with, no matter what your political leanings or your anything. I mean, everyone acknowledges that no

public defenders are getting rich and have 5 or 10 cases that they're getting a bunch of money to take. Caseloads are high, pay is low.

All of these contract changes that we're talking about, the net effect is it's going to increase the caseload. I mean, that's the reality. We already adopted a model where we agreed that the 300 weighted misdemeanors are too high, and now we're talking about how to increase that as a practical matter. And we already heard that the budget is flat, which means we're going to increase caseloads and decrease pay. And I recognize that there is a finite amount of money, but from my perspective, for decades, what we have done is say, "Okay, this is how much money you've given us. We'll figure out how to make that work." And what we've ended up with is the unrepresented problem, which, let's be clear, is in six counties. And we're talking about statewide changes to contracts to solve a problem in six counties. And it's serious, and those six counties have a...and there are other counties on the outline, but those are the main things. And it's a serious problem that we need to address.

But I wonder, and I'd like to discuss whether or not it's a mistake to make changes across the board when we have problems in six counties. And I fear that the problems that we create by these contract changes will increase dissatisfaction and will increase people leaving public defense. And I think no matter what we do, as a commission, we need to be really, really transparent and very clear in our messaging in that we can make all of the changes that we want to make, but we don't have the infrastructure in place, the support that we need to solve this problem. This problem can't be solved with the structure that we have at the current time. We know this because Director Kampfe's already talked about the math, it's math. And if we took the amount of forecasted cases by the number of current lawyers we have, lawyers would have to work nearly 3,000 hours a year to be able to cover that caseload. And if we did the math differently and we took the caseload and we divided it by the number of hours, we have a shortfall in the number of lawyers.

We already know that. And I think that we need to be talking about that, that we can make all the contract changes that we want to, and I don't think it's going to solve this unrepresented persons problem. We're still going to have an unrepresented persons issue. Those issues are related to unique problems in counties that those counties have not been able to resolve with our help. And we need other, as Judge Lipscomb talked about the other day, we need other partners to help us with this. It's not just us changing the contracts that are going to solve this problem. And those are my concerns overall. And I'd like to have a more full discussion about that. I mean, I always say I'm not a commission of one and I'm not a commission of one. Those are my particular feelings. And I'd like the commission overall to set me in my place if I need to be or to have a discussion about those things. I saw Director Kampfe first.

Jessica Kampfe: Thank you. It's a little bit off topic, but I want to correct something that I said and not let it stand. I asked for clarification on Commissioner Harris's question about increases for state employees. So, it's my understanding that the state employee salary increases are a function of the state salary pot, which is decided statewide later in the session and as part of the Department of Administrative Services' budget. So, we actually don't know what will happen with the state employees yet because that's not part of our budgeting process. So, I just wanted to clarify.

Chair Jennifer Nash: Thank you. I appreciate that.

Jessica Kampfe: Thank you.

Chair Jennifer Nash: All right. Commissioner Wright.

Jasmine Wright: Yeah. I mean, I guess I would just want to echo a lot of what Chair Nash said, and it almost seems like this Governor maybe doesn't understand the history behind the unrepresented crisis and how we got here in terms of where we are from a budget perspective. Because if at this point, I feel like we as a commission have taken certain steps to do everything that we can do, sometimes we're getting thwarted by certain people in the Legislature who I feel like aren't being super helpful to our position, but we're doing everything we can do as a commission to try to address this problem that didn't happen in a day and isn't going to be fixed in a day.

But without being able to properly fund, how much time have we put into the six-year plan and how much time are we putting into these systemic plans that touch on so many aspects of public defense to try to address these issues? And at the same point, we're getting undercut and we're not even being able to, with the with the budget that we're being given, I don't know that we're going to be able to even maintain current service levels, not to mention being able to deal with what we know is the situation that is going to come out of the horizon, which is going to create... We're here because Oregon has one of the most significant unrepresented situations in the country. And it's almost as if this Governor either doesn't understand how we got here or maybe doesn't care.

Or maybe the priority isn't, from the Governor's position, is not the unrepresented situation. Maybe there are other priorities that the Governor's office has right now that is not the unrepresented crisis. I'm not sure, but as a commissioner of this board, those aren't my priorities. My only priority is this crisis. But where we are from a funding perspective and the Governor's office refusal to give us the basic things that we need in order to try to address this

problem, I don't know, this seems difficult to me. And I think that we need to somehow address these issues with the Governor's office, but I'm not sure she's going to listen right now. I'll be honest.

Chair Jennifer Nash: Commissioner Mandiberg.

Susan Mandiberg: I'd like to wait and speak after Commissioner Buckley speaks. Thank you.

Chair Jennifer Nash: Okay. Commissioner Buckley?

Peter Buckley: Thank you, Madam Chair. I appreciate all the comments, and it does. It looks to me we are heading to a situation because state employees compensation gets settled at the end of session, there's usually a pot of money that the Legislature puts aside for that, for negotiations between the executive branch and the state employees. And we will end up in a situation where state employees will get a raise this year, and the nonprofit attorneys and consortia attorneys will not, if what I'm understanding here. So, that is a dynamic that we have to look at and face. The Governor's been very clear what her priorities are. It's housing, behavior health and literacy, really early literacy. Those are the things that she's trying to put the bulk of the funds into. So, no, she has not prioritized this crisis as one of our top three priorities.

But you mentioned it, Madam Chair, the executive director's in a challenging position, as are we, in that we have a responsibility to bring up that there is a red flag here, but we can't oppose the Governor's recommended budget. And so, it's a challenge for us to be able to say, and maybe we need to, in some way, put in writing a communication to the Governor's staff to say, "As a commission, we understand our obligation, but we do need to raise this red flag." That this has the potential of making this crisis worse, unless we can address the reality of what the contracts are going to look like with the requirement for more hours and literally because of no inflation being included, lower pay. So, that's what's going through my head.

Chair Jennifer Nash: I appreciate that, Commissioner Mandiberg.

Susan Mandiberg: Yeah. So, I hear frustration on the part of people who've been on this commission over the last year, at least, in terms of the amount of hours we put into coming up with a six-year plan that is now evidently rejected for no reason that we understand. So, it is frustrating. I share the frustration. I completely support what Chair Nash said earlier in this discussion. If we were to write the kind of communication to the Governor, and I would say to the Governor, not just to her staff, that Commissioner Buckley recommends, one of the things I would like to ask is what the Governor's vision is for public defense in Oregon.

We can try to infer that vision through her budget, but inferences may not be accurate, and we have incomplete information.

I would like to know what she sees public defense looking like in five years. How is it funded? How is it provided? Is her vision that we have only public employees and a panel similar to the federal panel cutting out private nonprofits and consortia, or does she have some other vision? Since we're in the executive branch, evidently our duty is to further her vision. We can only do that if we know what her vision is, and it would be useful to have some kind of articulated statement about where she thinks we should be going so that we can figure out how to get there.

In the workgroup where we talked about these issues, one of the things that came up, and I think Judge Lipscomb is the one who suggested it, but I would support it, we can't do this alone. Right now, it sometimes feels that the Public Defense Commission's main function is to be an entity that everybody else can blame for not solving the problem, and I don't love [Laughter] being in that position. Obviously, we need the help of the Governor. We need the help of the Legislature. We need the help of the courts, and we need the help of district attorneys because they're the only ones who are in charge of the demand. They present us with the cases that they file, and we are left to deal with finding lawyers to represent those people.

So, one of the things I heard, I think I heard in that workgroup is that some kind of workgroup that includes representatives of all of those entities, and I could list them out again, to talk about how we can work together to address these issues. Obviously, the issues are not just the number of unrepresented people. The issues are the fact that the state has a limited budget with a lot of demand, so that's something that has to be resolved, and we cannot resolve that ourselves. So, some kind of workgroup, similar maybe to the legislative group that came up with 337 a couple years ago, would be one way to start a process of actually addressing the problem as opposed to assigning blame, and that's what I would like to see. Thank you.

Chair Jennifer Nash: Commissioner Wright, do you mind if I call on Commissioner Lininger? Okay, Commissioner Lininger.

Tom Lininger: Thank you. Some people have made really good comments that I won't repeat, although I think some of these macro-level comments are really wise. I thought I might zero in on the question. So first of all, I really appreciate how Executive Director Kampfe did exactly what we asked at the work session and came up with really precise policy alternatives to modify the second MAC model. And so, one that I hadn't focused on until today is this notion that maybe there should be minimum expectations for caseloads, and I know that Director Kampfe

presented that pretty tentatively, but I just wanted to share my concern that I don't think that's a good direction for us. I do think, and I heard her say this, or maybe Chair Nash said, it might discourage people from wanting even to be in the business of taking on our cases, and I think that's such a concern. The complete attrition of attorneys from this category of work is one of our biggest problems.

And then as one who teaches legal ethics, I really think it's going to be impossible to come up with minimum standards that are consistent with duties of competency. I just don't think you can sort of legislate a minimum workload and then separately say, "Unless that impairs your ability to provide effective assistance of counsel." I just think that's inconsistent. So, maybe the inducement that Commissioner Harris talked about, which is that people who have a full caseload might qualify for some extra bonus, would be the best way to go about it, but I really feel uncomfortable, at least so far, with the notion of minimum caseloads. Thank you. By the way, I have to leave in just a few minutes. We have a dean search going on, and I have to leave in just a few minutes.

Chair Jennifer Nash: Thank you, appreciate that. Commissioner Wright?

Jasmine Wright: Sure. So, I guess I want to zero in actually on something that Vice Chair Mandiberg talked about, where she was asking essentially what the priorities of the Governor's office are. So, I guess I have a question for the committee and maybe the chair about, is this commission, are we an independent commission, or are we just here to do the Governor's bidding? And so, I guess I'm just wondering that. Are we here to come up with options and strategies to try to accomplish public defense, or are we just here to execute the vision of the Governor? And I think I need to understand that. I think we need to understand that. I think the public needs to understand that.

Chair Jennifer Nash: Yeah, thank you for the question. I mean, the way this is statutory, and I understand the question's provocative for a reason, but the legal answer to your question without that part is that we are at this point an independent commission. So, right now for two years, the executive director can be hired or fired by the Governor. After two years, that responsibility falls back on the commission. Commissioners can be removed for malfeasance, things like that. We have the ability to submit and advocate for an independent budget, independent of the Governor's office. However, as a practical matter, if we chose that route, we would be... Well, we're a unicorn in that regard. We're the only executive branch agency that has that ability. And if we chose that route, we would be completely on our own with no support from the Department of Administrative Services or any of the other budgetary structure that we have. In fact, they would be actively opposing our budgetary requests. We are

subordinate to the Governor. She is our head, for the lack of a better way to put it.

So, this is all new territory. We're six weeks into this, and it's difficult to navigate. I mean, there's the legal answer and there's the political answer, and it is difficult to navigate, certainly. The implication in your questions, I think, is a point that is something that the prior commission certainly struggled with under Senate Bill 337. And that commission took, it was the only portion of Senate Bill 337 that that commission took a position on in the Legislature, which is to make sure that we remained independent. It is one of the 10 principles of public defense, as well as a strong... The Sixth Amendment Project has been very clear when they advised the Legislature that maintaining the independence of public defense is integral to this agency and to this commission. And it's something that I think that if the time comes where we have to have a more full discussion about that, we can. But I think I can say with some certainty that the entire commission believes we should remain independent. But we are an executive branch agency, so it makes it difficult to thread that needle, I would say.

Jasmine Wright: Yeah, I mean, the reason for my question is that we can have independent goals and ideas, but how we can execute those goals are completely dependent on the budget that we're given from the Governor's office.

Chair Jennifer Nash: That is right.

Jasmine Wright: And that's the needle we're threading right now is that we essentially have to have the same priorities as the Governor because if we don't, she's not going to give us money, and we're not going to be able to...

[Crosstalk 02:46:32]

Chair Jennifer Nash: I will say this. Ultimately, I mean, ultimately, it's the Legislature that funds public defense. That funds everyone, right? So, the Governor, and like every other executive branch agency, the Governor says, "This is what I would like you to do with my agencies." The Legislature can say, "Go pound sand." And that's the same for the Department of Human Services, the same for DOJ, the same for everyone. So, it is true that we go in... And there are benefits, also, let's remember, going in under the umbrella of the Governor. When we were in the judiciary, we were completely on our own and had really no financial support or no structural support for our budget. We were out on our own. And of course, the chief justice was an advocate, but she did not come in and advocate for our budget. We were a separate entity.

So, there are advantages to us being in the Governor's office. But you're right, there is a tension there because we're an executive branch agency and we come

in under the Governor's budget. But the Legislature is ultimately going to do that, ultimately going to fund us. And there are other people other than our commission who are advocating for and lobbying for and having discussions with the Legislature about our funding. And we have two of our commission members, one of them is the co-chair of Ways and Means, Representative Evans; and Senator Prozanski, who is the co-chair of the Judiciary Committee. And so, they are in the Legislature, and they have ultimate say in how we get funded as well.

Jasmine Wright: All right. That's the end of my comments. Thank you.

Chair Jennifer Nash: Thank you. I appreciate it. Commissioner Lipscomb. You're muted.

Paul Lipscomb: So, I've only been with you folks for just about a month now, and I don't have all the answers, I don't have any of the answers, but I would reflect that my perception is that we don't have any control over our influx. Much like corrections, we have to respond to the problems that were dealt by other agencies, police and district attorneys' offices, etc. And we really need to have some degree of control over the inflow that comes in, and it can be informal through our relationships with the district attorneys and with the Legislature and with the judges, or it can become more formalized. And I don't know what the answers would be if we spent more time talking to the other agencies, particularly the ones that share our problem. Because it's nothing that we can solve in isolation. So, we need the assistance and understanding of other entities. And I would put the DAs first, but I would also involve corrections. It's a big enough problem that we're going to need lots of people coming together to solve it. And I won't say any more right now, but that was my perspective when I was on the outside and it remains my perspective today, only it's been underscored.

When you look at where our volume of cases is coming from on that graph we showed early today, the big bulk of it is misdemeanor cases. So, the tail is wagging the dog here, and we need to find another solution to misdemeanor cases. At least those where the district attorney's office has chosen to leave people in jail for as much as a month. On a misdemeanor, that just seems remarkably stupid to me because then when they finally plead guilty and come before the court, they get sentenced to time served. That's a really, really inefficient use of resources. And so, I'll say no more today, but that's kind of my perspective on where we are and how we're going to have to move forward if we're going to get a handle on this problem.

Chair Jennifer Nash: I think your comments are very well-taken and spot on and very much appreciated. Director Kampfe.

Jessica Kampfe: Thank you. I heard some ideas from commissioners around working with courts and district attorneys and public defenders to think about global solutions to the unrepresented persons crisis. I just wanted to note that the Governor's office has leaned in in this area. That over the summer, they started convening workgroups where they brought together commissioners, legislators, people from the Governor's office, DAs, public defenders, the courts to start talking about those types of solutions. So, that is an area where the Governor's office has invested time and energy in trying to help us find solutions of that nature and is continuing to do so. So, that's work that is ongoing.

They've also been really supportive of our efforts to reach out to the six crisis counties and to try to work for targeted solutions that exist within those counties. I also wanted to note that while the Governor's recommended budget is flat with regard to our contracts, there are significant investments in public defense that are in that budget. The investments are in different areas of our programs. And so, we are looking at investments in expanding the State Trial Division, in stabilizing the hourly rate, and adding hourly attorneys. So, in both of those areas, there is growth, growth that can be used to target the unrepresented persons crisis. And so, strategies around targeting that crisis can be run through those programs. We do see a workload model, particularly in our hourly cases. Those are cases where lawyers are billing hourly. So, they're timekeeping. And that is data that we can be gathering as we build on our conversation and build support for moving a workload model to the contractors in the next biennium. So, the Governor's recommended budget does have significant investments in public defense. They do not happen to be in the contracted program.

Chair Jennifer Nash: Yeah. And thank you for that, and that reminder. And to put a finer point on it, by stabilizing the hourly rate, what that really means is making an hourly rate for all contractors be the same... Not contractors, I'm sorry, for hourly panel lawyers be the same based on case type. So, we won't have a differentiation between in custody, out of custody, THIP, non-THIP. And that really should, if that is fully funded in the Governor's budget, be able to get a lot of those people who are out of custody on the unrepresented persons list off that list because there won't be this, "You get paid the highest amount for taking in-custody felony cases." You'll be paid the same, whether a person's in custody or out of custody, and for misdemeanors in custody or out of custody. So, it should really be able to help start clearing some of those cases off the unrepresented list. That's the hope. That's the plan. That's what the matrix... The matrix? [Laughter] The data tells us. Commissioner Harris.

Robert Harris: Thanks. That's actually interesting information, Executive Director Kampfe, that there is more money being put into this budget, but it's going into state offices, and I guess hourly lawyers. And hopefully your data shows how many cases they

can actually take. Although you'll probably lose some hourly lawyers if the hourly rate is reduced, which I'm assuming is the plan. But it seems like the most efficient, cost-efficient delivery system are the law firms and lawyers with contracts, yet they're the ones that are given no increase. And decreases, effectively real dollar decreases with this plan, with the agency's plan. So, that doesn't seem to make much sense to me.

That aside, the other thing is, is our six-year plan consistent or congruent with what the Governor's office seems to want to budget? If it isn't, then what are we doing? Why did we adopt a six-year plan that's not going to be in sync with the Governor's thinking? So, I question my decision to vote for that [Laughter] at this point. As you pointed out, we are at the agency of the Governor's office, the executive branch, therefore we have some limitations. So, why isn't our six-year plan in sync? Or is it? Maybe it is. I don't know. But man, this whole process is just raising a lot more questions than answers for me right now. Oh, I did have one other question, just to pivot a little bit. Is the money allocated into specific, delivered into specific buckets, like for juvenile, for PCR, for everything like that? So, we don't really have the ability to say, "Let's not do PCR. Let's make everybody just the same juvenile contract. We'll save 10 million bucks." Can't do that.

Jessica Kampfe: No.

Robert Harris: Can't say we're not going to do dependency representation because it's not constitutionally required. And so, we're going to change the statute. We're just going to wipe out all the dependency and use all that money to actually give people a COLA this year. Can't do that either, can we?

Jessica Kampfe: Our budget is allocated into discrete buckets, and Ralph Amador presented on those budget buckets earlier today. In order to move money from one budget allocation to another budget allocation, there is a legislative process to do that. That legislative process is called a rebalance. And it requires legislators to vote in favor of approving it. So, it is not something that the agency can independently do.

Robert Harris: Yeah. So, the tools you have to give increases, COLA increases or merit increases or whatever to contractors don't seem to exist, nor does the budget seem to currently, although that could change, I know, during the legislative session, if someone were to step up and propose something. It just feels like Groundhog's Day. And this isn't, by the way, the first time we've had a crisis in public defense. I'm sure Chair Nash remembers '03-'04, but there was another one, too. It was like, I don't know, it was the mid-teens or something, wasn't it? When we had another problem where we didn't have enough money to pay the contracts. And I think I said, "Well, let's just pay what we should be paying, but we can

only buy 20 months, not 24 months, see what happens." They didn't go for that either.

But it just feels like we're in a pickle. It feels like we can't do what we need to do, not only to address the short-term crisis, but also to implement a six-year plan. And not even a six-year plan that gets down into the national standards. Let's get a six-year plan that gets down to 250 weighted caseloads a year from 300. Let's do a plan where the misdemeanors and the C-fels have increased weight because we know that those aren't given enough weight, as we pointed out. But it seems like we're stuck with the same numbers. We're stuck with the same budget. Oh. And we're getting more cases, of course. Well, that's probably built into the CLS though, I guess.

Well, I mean, what are the options? To tell people the MAC is 380 now? I mean, I'm not sure what the options that we're being given here. And as very part-time commissioners, I feel somewhat lost on what to recommend to you right now. Other than to say my first priority is to get everyone a lawyer. That's what I can tell you. And I don't even care if it's a lawyer that is like an emergency room doctor, can stitch them up and send them on. Maybe that's where we're at. I don't know. I don't love it. But the other option is people sitting there for months and months without lawyers. So, I would love to be able to enlist DAs and judges into this. My experience is they all have their own counties. They all have their own elected status. They all have their own ways of doing things. They feel very protective of their prerogatives. It's very difficult to do it on a county by county. I'm not saying you shouldn't try; I'm just saying it's very difficult. And you might have some success, but I don't think we can bank on that as the long-term solution. So, again, I feel somewhat lost as to what advice to give you other than focus on the unrepresented crisis. Good luck.

Chair Jennifer Nash: Thanks, Rob. I want to make two comments before Commissioner Buckley. One is just a point of clarification. The Governor's requested budget includes hourly rate increases consistent with what we requested in our POP 104. And that is \$230 an hour for felony cases, \$205 an hour for misdemeanors, \$75 an hour for investigators, and \$85 an hour for mitigators. So, that is in the Governor's requested budget, and if fully passed, that is what we've approved. That's what the agency will implement. That's what the hourly rate will be, and custody status will be irrelevant. And then the other thing is, I just want to say that I want to go on the record as disagreeing with you, Commissioner Harris. An emergency room doctor, emergency room lawyer is not a constitutionally adequate lawyer. And we want people to have constitutionally adequate, appropriate defense, not any lawyer because that's a denial of counsel the same way as not having a lawyer at all. That's my opinion and my position. Commissioner Buckley.

Peter Buckley: Thanks, Madam Chair. I appreciate the fact that the Governor is agreeing to the POP, the policy option package that we did approve, that is greatly appreciated. That is a step forward. As part of the discussions that we've had, and even for this discussion with the Governor's office and legislators and district attorneys, I think we're still at a point where there's not an agreement on the root cause of the problem. We still get pushback saying, "No, there actually are enough attorneys," or "That's not really the problem." Sitting here in Jackson County, I can tell you that's really, really the problem. We don't have enough attorneys. And I don't know how we can get consensus on this. We've done the studies that have been done. The national studies have been done. The studies by outside groups have been done. They all say the same thing. We don't have enough attorneys. When the courts did their crisis plans, each one of them said, "We don't have enough attorneys." And yet we're still in the situation where district attorneys are saying, "No, it's the public defense commission's fault," or "It's the public defender's fault that this crisis is here."

So, I understand the frustration that people are talking about. I do appreciate Commissioner Mandiberg's comment that the OPDC seems to be set up to be the one area that everyone can agree to blame rather than how do we come together to try to find a solution? I think part of our responsibility is to find the way to raise red flags when there are red flags, both to the Governor and to the Legislature and to the public safety community overall. I think that's our responsibility to say, "Look, we see a problem coming down here and we want to make sure you're aware of what the problem is," and to the best of our ability and to always emphasize our goal is to end the crisis by increasing the number of attorneys. That's our goal and that we need to be consistent with our communications on that. The executive director is in a position where she needs to and she's doing a great job. She's keeping things balanced. She's keeping people informed of what's going on with all parts of the agency, how the agency is trying to address things. She's doing a great job on that. She can't be advocates.

As individuals, we can be advocates. I can go and sit down with a legislator as an individual, making clear I'm not speaking on behalf of the commission or on behalf of the executive director. I can be an advocate that says, "This is not going to work unless we can make a dynamic change." So, that's something each one of us can do, and if at a future time we feel positive enough to draft a communication that tries to raise red flags without blaming the Governor, not blaming the Legislature, just saying, "This is where we are. We have a six-year plan. This is what it's based on. We need your help to make this happen so we can solve this crisis."

Chair Jennifer Nash: Point very well-taken and very helpful information. And I realize that doesn't give Director Kampfe a lot of concrete information about what she should do

now with potential contract changes, but I think the takeaway from this is that we need to continue to talk about it because we don't have an agreement really about how to move forward, and we don't have both on a macro level and a micro level. So, we have a workgroup that's, well, actually, I don't know. We're going to have to reschedule our workgroup for March because I know it's going to occur during... We're not going to be able to make that time work, so we'll have to reschedule it. And we should probably do that sooner rather than later, earlier in the month so that we can continue with these discussions. Because I think it's necessary and important, and timing-wise, very important, that we do this as early in the session as possible. So that if we are going to make some communication as a group, we are able to do that.

But to Commissioner Buckley's point, and we'll hear more about this later from Ms. Taylor, we all have the ability as individuals to talk with any individual that we want to. We just can't do that as an official member of the commission. So, you can do it as an individual constituent, but you can't do it as a representative of the commission. And I realize we are way off the agenda timing, and I appreciate the full discussion. I thought it was really, really important and really necessary. But what we're going to do now is we're going to just switch gears and we're going to move to our Local Spotlight for Klamath County. We have Presiding Judge, is it Janey or Janney? You're muted.

Andrea Janney: Okay, gotcha. Sorry. It's Janney.

Chair Jennifer Nash: All right, Presiding Judge Andrea Janney from Klamath County. Thank you very much for agreeing to join us. You got the tail end of a lengthy discussion we've been having about policy, [Laughter] regarding public defense in general. And we appreciate the time that you've taken today to meet with us and talk with us about what's happening in Klamath County. So, with that, I will turn it over to you. Thank you.

Andrea Janney: Okay. I really want to open it up to questions if you guys have really specific questions about Klamath. I think we are in a unique position. We no longer have a consortium. So, all of our providers are independently contracted. When I took the bench, I had been part of the consortium and doing dependency defense for about eight years before I took the bench, and that was kind of the only system that I knew of. And then being on the bench now for a while, watching KDS dissolve, and now we just work with all these independent contractors, which I think puts us in a unique position.

I think we may be the only county that doesn't have either a PD or a consortium and we're all independent. So, that is unique and also unique in that we have had, I'm sure you're all aware, of the district attorney kind of crisis we were in for quite some time, not having a DA for over 18 months, just getting one, then

being woefully understaffed in that department. So, very recently, the district attorney has hired another deputy. So, I think he is up to four deputy district attorneys. And so, I would expect more filings, especially hired a misdemeanor deputy. So, that is going to have an impact on us.

And then I'm sure you're all aware, we have about 15 contract attorneys and 4 of those do mostly just dependency and delinquency, so I have really 11 criminal attorneys that work with us on a very regular basis. Eight, I think only eight of those are major felony qualified. And then a few are just C felony and then misdemeanor qualified. We were feeling pretty good about ourselves back in November going on, even though we knew that the majority of our really qualified attorneys were reaching their MAC, they were going to be cut off. We had had word that we were going to be getting a new misdemeanor-qualified attorney in town. And so, we thought that was going to take the pressure off. That did happen. But what also just happened to us recently was an abrupt exit of a misdemeanor attorney that was carrying a considerable caseload.

So, when I look at our dashboard today, especially when I checked today and Crystal had run some stats for me, out of the 120 unrepresented individuals we have, I think a large bulk of those are due to this one attorney's abrupt exit, and we are trying to figure that situation out the best we can, but it has certainly left us in a hole. So, I think if we were to look at the graphs on what it looks like for us, it has tripled in the last year, whatever it was, our number of unrepresented. But I think that is a large part based on our loss of an attorney, and we don't have the way to plug the holes. I say that, we were doing pretty well, which would not be very fair to the very hardworking contract attorneys that we were having that do more than their fair share, frankly. They work really, really hard and they really believe in the cause, and they take cases when I ask, or they apply regularly. I think I have a few that, well, frankly, they told me two. I have two attorneys. One is major felony qualified. One is the new attorney who's just misdemeanor. They're my only attorneys left with any capacity. So, a complete fallacy if I say that we're doing great, but again, we're in an odd situation. But I do, again, have those contract attorneys that really step up and they apply. So, I have been learning the process of what that takes.

And I think what helps us in Klamath County is we really have a good working relationship with all of the defense attorneys, the court, the DA's office. We all communicate, and we understand everybody's predicament. We understand the predicament the DA's office is in. We understand how busy and maybe overworked some of our defense attorneys are and they are scrambling. And so, we all try to work together to make that easier on the system and get these people the justice that they deserve. But well, that's what we're working on. We have, and I think it's also unique for Klamath County, is we have a case manager of sorts. And I remember I had put this in our crisis plan that it works really well

for us. And I think, frankly, it is the reason we are able to stay afloat as well as it was kind of a residual from our consortium that would assign attorneys and keep track of everybody and keep track of conflicts and see where everybody's at in different courtrooms.

She is now one of the contract attorneys, gets money from you guys, that extra little bit to employ her to kind of assign us attorneys, keep track of everybody's availability and capacity and then inform us judges. She's presented all of our arraignments and then sometimes at our criminal mandatories as well, to kind of tell us directly who can do it, who has maybe applied, like we might be appointing OPDS. I think I did arraignments last week and there was a couple of times where I do appoint OPDS, but Tammy would tell me, "Hey, Ms. Dougherty has applied for this individual. We think she's probably going to get approved for it." So, I can put an asterisk there and know and assign the appropriate dates for these individuals based on, okay, I know I have people signing up.

And I do have that. I've asked those attorneys specifically to, "Hey, keep me updated on how many cases you have out there that you've applied for, when you applied for them." So, I can have an idea on how long this is taking. So, I can set appropriate dates and let my other judges know how long it's taking on these hourly cases, how far out should we set these individuals and what can I realistically tell a defendant who's standing before me and I'm explaining to them, "I don't have an attorney for you today. I'm appointing Oregon Public Defense Commission. But it sounds like I could have one for you maybe in a couple of months based on these timelines." So, that's kind of the system that we've been operating down here. Again, I felt like we were treading water and doing fairly well until this kind of bomb went off in the last couple of months. So, that's where we're at.

I've had conversations because I know with the commission and all of your discussions, I've had kind of conversations with our attorneys about what they would like to see happen in Klamath, how they feel this is going. And they're very independent individuals that have different outlooks on how they think things should be run, and I respect that, but they're all kind of saying, "We don't want a consortium. We want to stay on our own. We want to do things our own way." Which is great, but I will tell you from the bench's perspective, we do then have concerns about some quality control issues because back when we had consortium, I could rely on that a little bit. And it was maybe not have been a perfect system, but I could rely that there was a quality control out there paying attention. And now with this, I know how busy you guys are, and I feel like there's just a lack of that oversight that maybe could have prevented kind of the situation that we are in now. Maybe it wouldn't have. But that we have this oversight on these independent contractors to make sure that they're able to provide the type of service that we are expecting of them.

So, when I asked the other judges, "What are you concerned about?" And that was kind of their main thing. We have a fantastic group of lawyers. And I have some... I mean, shoot, one of our defense attorneys, he's been representing, doing major felonies since before I was born, and I would trust him. He can work through a caseload very easily. But then I have these sometimes new babies coming along that really don't know how to manage their time or manage the caseload they have, and it feels like they're all maybe under the same expectation of whatever this max capacity is, and it just isn't a good fit for everyone. So, that's one of the kind of concerns that I've had. But that's kind of the status of where we're at. I signed eight new appointments today. I'm hoping that brings our numbers down.

I had asked my staff to kind of run through the OJD dashboard and look at all of those so I could get a better idea of how many of those unrepresented individuals are really right now due to this one attorney leaving and where that leaves us versus how many I'm trying to figure out are due to poor client behavior, firing everybody. Like which ones that I really need to pay close attention to. And I will say that when we have been panicked about someone, whether it be kiddos in a dependency case or someone in custody, and we have gone to you all about, "We need help, this person needs an attorney quickly," you guys have been on the ball about that, and I really appreciate it. I think there's been some slip-through of some of the more minor things, which is totally understandable under the circumstances.

So, from my end, I'm trying to really get a handle on where the fires are, and which fires. There's some fires that are our responsibility, that the way simply we've been doing our business process or keeping track of things hasn't been efficient, or our numbers aren't as accurate as they need to be. But I think that's overall where we're at. You guys have any questions?

Chair Jennifer Nash: Thank you. Are there any questions?

Jasmine Wright: So, Judge Janney, this is Jasmine.

Andrea Janney: Hi, Jasmine.

Jasmine Wright: Lovely to see you.

Andrea Janney: You, too.

Jasmine Wright: So, I kind of want to talk to you about kind of where Klamath is going in the foreseeable future because I know as a former practitioner in Klamath, that some of your major felony-qualified folks are probably retiring pretty soon.

You've got Mr. Studenberg, you've got the Costellos, and Mr. Studenberg, of course, is murder qualified.

Andrea Janney: Right.

Jasmine Wright: You murder qualify folks. So, what do you think Klamath's needs are going to be in the next two to three years in terms of some of your major felony-qualified practitioners? And what is Klamath going to need from the commission in terms of qualified attorneys?

Andrea Janney: Well, let's face it, we need attorneys. We're going to need an influx of attorneys. The thought of Phil Studenberg and Bob Foltyn retiring makes me want to have a panic attack because we will be losing gold, and we just do not get in our rural community, it is very hard, to attract new attorneys in, and we're trying. Between a law clerk, we're like, "Tell everyone, tell everyone, come to Oregon." But it is just really hard. I understand that the Valley and the kids or the young people graduating from law school, it's just really hard to attract them to our community for a variety of reasons. And I understand that. But we are going to be in a desperate place in a few years. And I would like to think that Phil and Bob could practice into perpetuity, but I know that's not going to happen, and we are going to be in deep trouble.

So, yeah, thank you, Jasmine, for bringing that up because the bottom line is, is we don't have enough. We don't have enough. And we're not going to have enough of when those new ones come in. If they come in after people like Phil and Bob and whatnot leave, who's going to teach them? Who's going to show them if they're just going to be learning on their own? So, it's so important to get people here when we have fabulous attorneys who are very willing to reach out and help anybody. They're begging to be asked, frankly, that I would love to help you and teach you. We just don't have the people.

Jasmine Wright: Right. And each of those attorneys, Judge, all those attorneys have maximum caseloads right now, right?

Andrea Janney: Yeah, oh yes, they're at capacity.

Jasmine Wright: So, we've got four to five attorneys right now with maximum caseloads that are probably going to retire in the next four to five years. And so, we've got upwards of 300 clients that are going to need an attorney. So, okay.

Andrea Janney: Exactly right.

Jasmine Wright: Thank you, Judge.

Andrea Janney: Of course.

Chair Jennifer Nash: Great points. Great questions. Thank you. Anybody have any other questions, comments? I have a question, and you might not be able to answer it, but I'm just curious. Since your DA's office has been understaffed, have you seen an increase in, for lack of a better way to put it, crimes that haven't been addressed? So, I'm wondering, I mean, it's kind of a weird way to ask it, but I'm wondering if when the DA's office is fully staffed and they start charging the way that you would expect them to charge if they're fully staffed, do you think that's going to increase public safety? In other words, have you seen a decrease in public safety with an understaffed DA's office? And I'm thinking about this, I'll tell you the context of my question, I'm thinking about it in terms of alternative treatments for misdemeanors and things like that on public safety. That's really kind of the overarching thought that I've been percolating for a while.

Andrea Janney: I mean, do I know that that's happened? I probably don't. Do I feel like that's been an issue? Yes. And we have a complicated issue with the, I mean, it's the whole system, right? Our jail. We can't hold people and it's this circle of challenges that we have. But yes, I think there's been an issue of safety, and it doesn't take long for people in our community to figure out what is and isn't getting prosecuted or what you are and are not going to jail for. It's an issue. I'm hoping that we all get on the same page, now that we have some more staffing and then the attorneys are working together. I still think some alternative court, and we've had some creativity, which I sincerely appreciate, from the deputy DA and if I get a really good attorney doing arraignments that day, people that are able to recognize those lower-level cases or these cases that we can handle on the spot. And I've had those attorneys step up and be, "Hey, I'm willing to step out of the room and talk to this individual really quick and we can get this taken care of." So, I do have cooperation like that, and I'm always encouraging the attorneys to work together, and they do a really good job, but not enough that we need, if that makes sense.

Chair Jennifer Nash: I appreciate that. Other questions, other comments? All right. It doesn't sound like it. We really appreciate your time. I appreciate you taking time out of your lunch to meet with us and give us some ideas. And that really is very helpful. And I think, I mean, the big thing, of course, is that your county, although you may be keeping it together for a while, you're in that position, like a lot of our rural counties, you lose one or two practitioners and it becomes a crisis.

Andrea Janney: Absolutely.

Chair Jennifer Nash: And so, that's important for us to know and think about in terms of planning and to talk to the Legislature about that.

Andrea Janney: Yeah.

Chair Jennifer Nash: So, thank you.

Andrea Janney: You're very welcome. And thank you for your work, everybody. Take care.

Chair Jennifer Nash: Thank you. All right. Okay. So, moving back to our next item, which is OAR and OPDC policy briefing.

Heather Kessinger: Hello, Chair Nash, Vice Chair Mandiberg, Director Kampfe, and members of the commission. I'm Heather Kessinger, the senior policy analyst with Compliance, Audit, and Performance. And I'm here with...

Jennifer Bell: Good morning. I'm Jennifer Bell, rules and records coordinator for the commission.

Heather Kessinger: And we're here today to provide an update for how the policy team has been working to restructure the organization of how we manage our policies, our processes, our procedures, and rules to be more efficient in our daily operations for our division. Mara, will you go to the first slide, please? Thank you. So, the policy team has been working on the policy inventory. We recently updated our internal development policy, which was approved by our executive team on February 1st, 2025, went into effect. And as part of the organization process, we have been working on our policy inventory to locate existing policies within the agency that may or may not be current, need updates, or possibly need to be repealed. To continue to stay organized, we've created a policy and rules tracker to manage and track administrative rules, policies, processes, and procedures. Next slide, please.

So, as part of the new structure, we have organized the policies, processes, and procedures and created the OAR rules tracker to align with our agency Oregon Budget Information Tracking System, which we call ORBITS. The structure is for our numbering sequencing for each division and section for administrative rules and policies, and it's color-coded to align with our agency organizational chart. In the policy and rules tracker, each division and section is called out, numbered, and color-coded to align with the agency organizational chart and ORBITS structure. We will be working in collaboration with each division and section subject matter experts to identify existing policies, modifying as needed. And the subject matter experts will also work with the policy team as the agency develops new guidance, including the OARs, policies, processes, and procedures. Next slide, please.

So, this is an example of our ORBITS structure. So, we've created this for each of our divisions, and within each division is a section and the assigned new policy

naming structure. And as you can see on the screen, we have the number sequencing for policy, and then next to it is our administrative rule numbering sequencing. So, this is designed as, for example, the 404, that is our agency number. And so, we do the 404 and then we line it up with each division, the section, and then we assign a policy number, and part of the naming condition will be the policy name. The administrative rules, the chapters that Jennifer had created line up with that structure. So, as we move forward with the agency, with executive, this is to help keep everything really organized. So, if someone makes a request, like a public records request, or someone needs a policy or a process, we can go into our tracker and be able to locate stuff and be able to get everyone into our library, basically, of where to find all our documents within the agency. Next slide, please.

So, here is one page of our policy and rules tracker. This is where we're tracking, and this is built out farther, but with the screenshot, we can only capture so much information. So, this is where we are tracking for each division within the agency. As you can see down below on the tabs, there's a tab for each division. And then to the left is where you can see what sections belong in that division with their number category. And as we create policy, every time we go to draft a policy, we assign a policy number, and it will go onto the tracker along with the policy name. We have a policy approved date, date goes effective, the section. And as this builds out, it's tracked for administrative rules. We're tracking is it internal policy, external policy, communication, where it's been, where is this document stored on our website? Or our internal, what we call SharePoint, is where we keep internal policies. And then we're also keeping track of, did the communication go out? Who did it...be communicated to? And if a policy expires or when it's time to re-review to make sure everything is current. So, it's built out to be able to manage that policy as it's approved within our agency. Next slide, please.

And the third example on this slide is, this is the color code. So, we color-coded everything to match. If you remember back in October, you were presented with the organizational chart, and within that chart, each division and section within our agency has their own color. So, what we did is we adopted those colors and used them within our organization system. So, that way it's clear and there's that transparency and the clarity across the agency of so that way everything is aligned and makes more sense. Next slide, please. So, now that we're in executive branch, we're busy because now we have to transition and bring in all these policies that fall within executive direction under authority of the Governor and DAS, which is Department of Administrative Services. And so, as we transitioned in, we created a policy list from DAS, the Department of Administrative Services. We brought over all the policies that we know that all agencies under executive branch must have within their agency. And so, we created the DAS matrix, and what we did with the DAS matrix is we crosswalked

it with all our OPDC current policies. And we wanted to make sure that we had flagged any of our current policies that we needed to go back and update, and what policies do we need that DAS requires and that we don't have.

So, we've completed the matrix, and we have passed it out to the division managers for the sections that fall within DAS. For example, there was facilities, human resources, IT, procurement, and there was some general policies as well. And everyone was very responsive. And so, our policy team did the first QA review, flagged everything that we need to go out, provided instruction, and then submitted to the team for them to review. Next slide, please. Here is an example of what our matrix looked like, where we pulled all the DAS policies that are required and where we had cross-checked them. Of course, this is built out more where there's some checks and balances and verifications included, but what this did was determine what policies that we can just adopt. And so, we don't have to go and write or amend, which ones are we able to adopt and implement? And then the next step was, which policies do we have in place, we compare with the DAS policy, to determine if we need to amend and modify to make it more current. And then the third phase of it was identifying that we don't have the policy, and we need to adopt the DAS policy, but we need to maybe modify it, amend it, so it actually fits our agency. So, we call those amended to fit OPDC. And so, there was the three buckets of work that we reviewed on those. Next slide, please.

So, out of that work, just last week, we went to the executive team, and we were able to adopt 45 of the DAS policies. And like I said, this is human resources, facilities, IT, and I probably missed one thing that I was talking about. But we were able to adopt 45, which we'll be implementing, and they will be in process. We were able to identify 26 OPDC policies that do need to be amended to align with DAS and our new system, the ORBIT structure. So, they need their divisions and sections and numbering sequence updated. And a lot of these are about two years old, so it is time for us to go in and review them and make sure that they are current. And the next number is 47 DAS statewide policies have been identified. They're not OPDC policies, but they do need to be amended to fit OPDC. So, we do have 47 that they have been reviewed, and they have been submitted to the policy team, and we are preparing those to bring to executive team for review as well. So, those are our next step in process. Within that DAS cross-check, there were seven Oregon administrative rules that we have under review, and there is one DAS statute that we are reviewing as well. Next slide, please.

And so, as part of that process, as I said earlier, when we started, we were updating, we just updated our policy development policy and really restructuring how we review our policies and create our processes and all of that. And part of that process is we have created what's called a Policy Project

Request form, which we will be implementing starting March 1st. We've tested it with our DAS matrix, the managers and subject matter experts were kind of our test, and they used the form, and so we did all the testing, and we're ready to launch it. And so, we're going to be moving forward using a Policy Project Request form, where people can submit their request for a policy, a rule, process. And when it comes, and when we receive it, it comes onto our tracker, where we're going to be reviewing those and prioritizing them between the policy team and leadership, and they will be prioritized with considerations such as cost, current agency priorities, and scope of impact. The policy team will be working with the appropriate subject matter experts to draft the policy and carry it through internal processes. And the Policy Project Request form, excuse me, will also be used to submit for requests for rules, and like I said, processes and procedures. Next slide, please.

So, here's just a snippet of what our form looks like. So, when people go to submit, we're going to ask who's the requester, the division, the section, what is the type of project, what is your time frame, who are the subject matter experts? And then we ask the question, we request a description, why is this needed? Who are the stakeholders if it's external and there's stakeholders involved? So, we try to cover as many preliminary questions, so that way when we go to review to prioritize, we have a good picture of where we need to prioritize the need for that policy, process, or rule. And once these come onto our tracker, then we build it out as more of a project management. So, we're going to have deadlines and timelines, and we could put these on the calendar to coordinate with executive team meetings, commission meetings, the deadlines to have materials available for, say, a commission meeting, when are the materials due for your particular request? And so, go ahead and next slide, please.

And so, here is a snippet of our tracker for when we receive these requests and how we're managing that work, so that way we are meeting our priorities and categorizing it correctly and being able to track and manage. Currently on the tracker, like I said, we are in the process of implementing it, and currently we have 92 project requests that have been submitted since the launch of just our test pilot and what we have used. And go ahead, next slide. And so, now I'm going to turn it over to Jennifer, and she's going to provide an update for rules.

Jennifer Bell:

Good morning, thank you. So, rules have been kind of a breaking news topic this week. As of this morning, we did receive a memo from the Governor asking all agencies under the executive branch to really restructure how they look at filing administrative rules, what the process is for collecting public feedback and responding to that public feedback. There are also two bills before the Legislature, House Bill 2692 and House Bill 3382, that would pretty significantly impact administrative rules. Rules week was last week before the Legislature,

and there's kind of a lot of movement just around offering better customer service for rule filing, getting more public feedback, making sure there's opportunity, and that agencies have really incorporated some different lenses as they look at administrative rule filing and what that looks like.

I know when I came before the commission in December, we had talked about hoping to have some rules for July, and Director Kampfe and I had a conversation. And at this point, based on all the legislative movement and knowing this memo was coming from the Governor, we're really thinking that's probably going to be October for the agency. And I know we talked about that briefly in the December meeting, just wanting to make sure that we implement one process rather than implement one and have to change it in a month or two with the legislative changes that are potentially coming, wanting to make sure we're being very inclusive. It was our plan from the beginning. I come from another agency that has a pretty good rule process set up, but there are some new directives from the Governor that just came out this morning, and so you'll be hearing more about that as we move forward, but we really wanted to give you a super high-level breaking news kind of thing this morning, that there's a lot happening around rules right now.

And so again, the plan for the commission is that rather than July, we're going to be moving that initial filing to October. We're still looking at simple rules, really definitions, acronyms that are commonly used, rules around customer service, how people can engage with us. So, some pretty high-level base rules, not anything technical, just as our initial filing. But considering all of the new requirements that are in the Governor's memo that came out this morning, we really want to be cognizant of that. And again, rather than launch one process and then have to make changes and confuse people, we thought, "Well, let's just pause and be very planful and thoughtful about this as we move forward." There's so much happening as an agency, and we want to make sure we do it right the first time and get those processes done correctly for internal and external stakeholders. Any questions?

Chair Jennifer Nash: Do any commissioners have any questions? Thank you very much. I mean, this is, as they say, how the sausage is made, and we really appreciate the update. Being a lawyer and looking at OARs all the time, when I saw your spreadsheet of all the OARs and the classifications, I was like, "Yay, look, we have actual numbers and classifications for each division. This is super exciting." So, I appreciate your work. It's very tedious, but very important, and thank you for the update from both of you and look forward to future presentations. All right, thank you. Okay, moving on to the next item on our agenda, which is the legislative update from Ms. Taylor.

Lisa Taylor:

Hello. So, I have the legislative update. I've been trying to keep you guys informed with weekly emails, and so I just kind of wanted to go over the things that I've already sent you in case you haven't seen them. We provided a presentation to the Judiciary Committee just on an overview of the agency. I attached that to an email that was sent out, but if anybody would like to see that, I have it here available. We also later gave a presentation to the Public Safety Subcommittee about the unrepresented crisis. OJD and the DAs also gave a presentation on the unrepresented on the same day. We also are, and probably the largest thing that we're working on right now, is a continuation of, as I'd call it, the Tri-Branch Work Group, but a mini version. We're meeting with them weekly, which includes the chairs of HUB, SUB, and of Judiciary to talk about Senate Bill 337, as well as the unrepresented numbers and what's being done about that. It's kind of a continuation of the workgroup that Director Kampfe talked about that was happening over the summer and in the fall with a much larger group of folks, and this has been kind of narrowed down to a conversation with the legislators and us.

So, in that, we're providing monthly unrepresented reporting, which is a new structure we've sent out. We sent out an initial one back in the end of December, early January, and then this month we kind of finalized that structure. So, we are sending out unrepresented numbers specifically about those top six counties, and in those numbers we're providing information like the overall numbers, the MAC utilization, as well as cases that are being taken by our contractors, then the cases being taken by the Trial Division broken out into those county-specific areas, the numbers of short assignments that are happening, and the number of THIP cases that are being taken, as well as attorney attrition in those areas. And then we're also providing kind of an overview summary of what's happening in those specific counties. It was pretty well received by the Governor's office. We got some good feedback on it. And I also really appreciate, I've gotten some provider feedback, and outreach to them, I think it's going to be stronger this time around. Again, this is a new process. But we were able to incorporate some of the things that they're seeing on the ground.

Like, for example, in Multnomah, they're having issues contacting their clients because the sheriff's office is understaffed, so getting into the jail there proves difficult, and that takes attorney time and can affect how many cases you can take. I also really appreciate the reports we're getting from judges, like for Klamath. Klamath is not one of our six counties that we're reporting on, although it is right now kind of tied with Coos for unrepresented overall numbers. And so, I think in this coming report, which will come out on the 7th, in the statewide summary, I think I'll include something about Klamath and how they're experiencing a staffing issue that could lead to more numbers in the future, and that we're watching it closely. So, I really appreciate feedback on

those. I think we've gotten it, and I expect next month's presentation to be, or presentation report to be even more robust. Including we're going to be providing the case count before the MAC utilization numbers for our contractors because I think it's important to really highlight the fact that contractors took 6,800 cases last month, as opposed to just jumping directly into MAC utilization.

So, other than that, the session is continuing. Bills are being heard. We're providing fiscals. Nothing substantial, to the agency, anyway, has been heard yet. There was Senate Bill 477 [Phonetic 03:46:07], which provides money to the HECC for continued funding of the public defense classes at the universities. I'm sorry, I'm forgetting the word, but the practicum, basically. We also have some bills coming up next week that will increase crime or crime severity, and then there's also some bills that would decrease some crimes or crime severity, and that's an ongoing discussion every session. As an executive agency, we're not taking stances on those bills. We do provide factual information when requested, and data, you know, how many MAC it would take to increase a crime level, which is largely what we're trying to show in our fiscals. So, that's kind of the update of what's going on in the legislative session. I'm happy to answer questions or go into more detail about anything specific. I'll also point out that we will need a new chair for our Legislative Committee [Inaudible 03:47:19].

Chair Jennifer Nash: Any questions? Okay. I'll reach out and recruit someone for the Legislative Committee. Well, I might wait to do that, actually, till we have some new commissioners. All right. Thank you. Moving on to the Financial and Case Management System. Mr. Martin.

David Martin: Hey, good afternoon. My name is David Martin. I'm the chief information officer here at OPDC to present on FCMS. Let's move to the next slide and to the next slide. So, our agenda, we're going to cover six things. I know we've gone long today, and I know I have 15 minutes, and I'm going to try to keep to those 15 minutes, but I have maybe a little more. I'm not going to read from the slides probably as much as I used to, and I'm going to probably provide a little more context to what you're seeing on the slides. So, hopefully that doesn't eat up more time, but I think it's necessary for what we're trying to talk about today. So, next slide.

Accomplishments. The first one, Moss Adams change management discovery findings, that was distributed out in this last month. One of those things, just as it were, that came out of that was this presentation right here. Oddly enough, you guys don't like acronyms and IT speak and perhaps prefer more plain language. And so, that's something that we're going to endeavor to improve on in upcoming presentations. So, that went out this last month. The second one,

it's an accomplishment with an asterisk. And this is new information for probably most of you, but it's an accomplishment, but it's also identifying that we hit a snag in the project since the last time I was able to present to you folks. The short version, again, I'm not going to read the slide here, but the short version is this. In January of last month, I presented that we went out to... OregonBuys is our procurement solution that the state of Oregon uses, and we submitted our RFP to receive vendor proposals for FCMS. And there's some nuance to how OregonBuys works that I was unaware of. And that is as a procurement specialist, you don't have any visibility to the vendors that want to provide a solution for you until your RFP window closes. So, what we found ourselves in in the month of January was when our RFP timing closed, it was middle to end of January, the curtains kind of separated, and we got to see for the first time the vendors, the vendor proposals, and we got to do an assessment.

And what we found out is literally every vendor missed something. There were, I think, eight required parts to the proposals. And whether it be a cost sheet or maybe it was a list of customer references, there was something that every vendor missed. And what we found ourselves in in the 11th hour was, well, what do we do? And we decided that the right approach was to restart the RFP back up again, but with some adjustments. Obviously, not just to do it again to get the same result. In the time that I've spoken with you, to the commission, we have added an additional checklist to the vendors. So, they are able to go, "Yes, I've uploaded the cost sheet. Yes, I've uploaded the references. I've uploaded so on and so forth." So, we are expecting good outcomes this time around. Additionally, I do know just anecdotally that vendors have reached out to our procurement staff here at the agency and they're like, "What did we do wrong?" So, there's been some of that back-channel conversation to say, "Yeah, you missed this piece," or "You missed that part."

So, the vendors are aware that they missed the mark on the RFP process, and we are, again, expecting a much favorable outcome this time around. But the short version is that we are now basically, I heard someone speak earlier about Groundhog's Day. I feel a little bit like we are going to be redoing this. The conversation we had in January is now the conversation we're having in February. So, we close RFP this Friday, the 21st. And then from there on, the schedule then gets restarted out and we push out the evaluation and so forth. So, I know that's kind of a big thing. I usually hold my questions to the end, but I thought I'd take a quick hot minute here to give you all a chance to ask me any questions about this topic before I move on to the next slide.

Chair Jennifer Nash: Does anybody have any questions about the RFP? Just speak up if you do.

David Martin: Yeah, right. Well, and there is a chance if you want to ask towards the end, we'll have time for that then. So, Mara, next slide. As you can see, I just mentioned proposals are due this Friday, the 21st. Once that is closed, the evaluation team will begin a Phase 1 eval starting on February 27th that will conclude on the 5th. That third date, I want to talk about that. Because again, this is I think one of those examples of if you just read the slides, you're going to come to some wrong conclusions. I think it's good for you to see that when you close out an RFP, there is a process from the procurement side where you do award the contract to a vendor. "I choose you," right? "I choose vendor A." And then the other vendors that didn't get chosen get a protest period where they say, "Why not us?" And we as a state agency have to talk about why they were not selected. Fair and transparent, we're a state agency.

However, what I want to point out on this slide is that that's not going to happen on 3/14. The reason why that's not going to happen on 3/14 is I'm strongly recommending that we have a Phase 2 of our evaluations. Again, the line above talks about Phase 1. My evaluation teams, they're going to be essentially handed a very large PDF or basically a ream of paper where they are going to be evaluating that proposal based on our business requirements, system requirements, use cases, and whatnot. And they're going to validate that the proposal will meet those needs. But what it doesn't do is it doesn't talk about how it does it. Is it two clicks to accomplish that procedure? Is it 15 clicks? Is the solution intuitive?

Once we get the vendors down to a smaller number, we need to do demo evaluations. We need to be able to look the vendor in the eye, ask tactical questions, and really go over the right solution for this agency and for the state of Oregon. So, what's not on the slide that probably should be is Phase 2, what that looks like. So, more to come on that, but I don't want to give you guys the impression that 3/14 is going to be a determining of an award of a vendor, but that will be something that happens, but later in the process. Moving on to the next one. Yeah, sure. Risk governance, for the sake of time. We have five risks. I really just want to talk about three, but I'm showing you five. So, I do want to talk about why we're not talking about four and five, but risk one is, as has been discussed at length in this meeting today, is we have transitioned the judicial to the executive. There are some different rules around procurement that we have our eyeball on. I will reiterate for the record that we have been acting like an executive branch agency for a while on this project. We have been partnering and engaging all of the right folks on the DAS and the executive side of the house. It's still something we are looking at and acknowledging that could be something that bites us, but we are being proactive about that.

Change management. This is really just a callout that we still do not have a lead, a communication lead on this project. I will point out that we have a POP 101

that calls out a position for this. So, that's something that we're working to help address, mitigate that. That said, there will be a newsletter. I forget if it's already gone out or not, but that's something that we're going to be building in as a regular cadence. And then number three really goes back to what I talked about at the beginning of this, which is we're in the middle of Groundhog's Day. The procurement schedule's going to get pushed inevitably because we're having to basically let the vendors re-propose correctly this time around, and there's just nothing we can really do about that. Number four, IT solution concerns. I don't share that as a risk. There are 22 states that do what we do. There are private firms that need a solution like FCMS. There's large cities, counties, municipalities. There is a solution out there that is in this space that will do what we need to do.

And then number five, this was really a callout that as we were beginning this project, there were a lot of handwritten forms and manual documents that go into other things. And as we are getting further into this mature project, what does it take to bring those manual forms into a system like FCMS? Again, I don't believe that that's going to be affecting cost or scope creep, but it's on the slide, so I'm talking about it. Next slide. This is a great example of a way that we're going to improve how we communicate with you next time. This is a lot to see here about procurement, and I know that all of you folks are much more interested in what it's going to look like once we have an awarded solution, whatever that is. And I can't get into the specifics until we have specifics, but this is a procurement timeline. This is when we get to the end of completing that contract with a vendor. And even there, I noticed that the various colors represent the various workstreams. What we don't show here is even a second phase to the evaluation. So, I'm not a big fan of this slide, and I'm sorry. I know a lot of good work was done behind the scenes to present this today, but I don't think this is really a great picture of what you guys want to see, and we will endeavor to simplify what the procurement schedule looks like, as well as present another schedule around as well as we can what it looks like once we get a vendor on board, what that's going to look like, which isn't in my presentation for you today. Next slide.

Budget. There's not a lot new to share here. We've submitted our application for bond funding. No new news. It was included in the Governor's budget. No new news. We're still waiting on the confirmation of the 3.9 million bond funding. We have not heard where that lands today. I will present that as soon as we have information. Next slide. The status of this project is essentially trending medium risk across the board. I'm just trying to pull out, again, for the sake of time, what we may have. The bond funding, again, is yellow until it's green. Procurement, that first one, the procurement is yellow as we are now pushing out things a little further. And resourcing, as I mentioned, we have the POP 101 to address some roles that would really help get more people around

this process so that we have the right people in the right lanes, as opposed to having a more matrixed approach where there's people doing multiple different lanes of work. That's that slide. Next slide. Well, actually, I'll pause. I'll pause for questions on this. And then I want to quickly discuss about the topic of Nintex. So, open for questions on FCMS.

Chair Jennifer Nash: Doesn't look like it.

David Martin: All right. Well, I just wanted to call out, I know that Nintex had an outage, was it a week ago? I think for two days. I share your frustration. It is not a best-of-breed solution. The outage was not due to my staff. It was not due to OJD. It was a national outage that affected everyone that uses that solution. Really, the path out of Nintex is FCMS. And going back to what I hope to present next month around schedule, around building out whatever that proposed solution looks like, my hope and anticipation is you don't need the whole car put together before you can show what the interior looks like, for example. And what I'm hoping to do in the case of what Nintex does for our agency is perhaps prioritize that part of the solution to make that available before other parts are ready to go. So, more specifics to get into once we get to an actual tool to talk about. But I just wanted to acknowledge that Nintex did have an outage, and we are at the behest of that solution for now.

Chair Jennifer Nash: Well, thank you. We understand. That's why we're like, "We got to get this thing in place." [Laughter]

David Martin: Right.

Chair Jennifer Nash: But we appreciate it, and we appreciate you updating us and thank you.

David Martin: Yep.

Chair Jennifer Nash: All right. Director Kampfe has some slides that are in the materials and didn't have anything extra to add in terms of her director's update. If you have specific questions for her, you can communicate directly with her to ask them. But we are at 1:04 and I want to be respectful of everyone's time. And so, with that, I plan to adjourn. Just a couple of notes. And one is that we do have our big legislative budget presentation to the Legislature the week of March...

Jessica Kampfe: 17th. Yeah.

Chair Jennifer Nash: Yeah. And I will be gone on a long-planned trip out of the country. So, Vice Chair Mandiberg will be there representing the commission, and I will be returning on the 26th so I will be missing the next commission meeting because I'll be on a plane. And our next commission meeting is March 26th. I will work with Mara to

send an email out. I'm thinking of trying to reschedule our workgroup to maybe earlier in the month.

Jessica Kampfe: March 6th?

Chair Jennifer Nash: March 6th. So, I'll have Mara send out an email about that and see if people are available. I think that would be helpful for the commission and for the agency. And with that, we will adjourn and thank you very much for your time today. All right. Bye-bye.