

Chair Jennifer Nash: Good morning and welcome to the January 15th, 2025, meeting of the Oregon Public Defense Commission. I'm Jennifer Nash, the chair of the commission, and we are here today with a new commission member after the tenure of Judge Selander ended. Retired Judge Lipscomb, who may be regretting it at this point, agreed to join our commission, and he is here for our first commission meeting. Judge Lipscomb was a Marion County Circuit Court judge for many years, including the presiding judge, and he retired from the bench in 2008. After his retirement, he was the executive director for the consortium in Marion County, and he did that for a few years before he retired to what he is doing now, which is mediation and arbitration. He tells me he much prefers arbitration because he gets to make a decision as opposed to mediation, where he tries to convince people to make their own decisions that are in their best interest, and they're reluctant to do so. So, he is trying to do more arbitration than mediation, but we are very happy to have him join the commission.

And for those of you who are not lawyers, and those of you who are, Judge Lipscomb, in this month's edition of the Bar Journal, at the very end of the Bar Journal, had a photo that he took from his residence in Sisters published in the Bar Journal. Which is not going to be very good for me to show it, but here's the picture of a sunset from his back porch area outside his property in Sisters that he took on his iPhone. So, it's a beautiful picture, and we are very happy to have him join the commission. I talked with him a little bit on Monday, and he is drinking out of a fire hose, but also very excited to join the commission and get down to doing work to help solve the complex problems that we have before us. So, welcome, Judge Lipscomb.

Paul Lipscomb: Thank you very much and thank you for not having me have to give the brief overview that you just did.

Chair Jennifer Nash: I'm sure that I missed a whole lot, but I hit the highlights. [Laughter] All right, moving next to public comment, we have one person who has asked to give public comment this morning, and that is James Comstock, and I see that Mr. Comstock is here and ready to begin. Whenever you're ready, Mr. Comstock.

James Comstock: Thank you. Members of the commission, my name's James Comstock. I'm a licensed defense investigator and a member of Defense Investigators of Oregon. I'm here again to share that since my comments in December regarding timely payment, payment times have gotten even slower. Last week, I received payment for invoices 45 days after submission. I fear that our constant raising of this issue has made this agency and the commission numb to our complaints. Despite the agency telling providers and this commission repeatedly that it is committed to reducing and maintaining payment times, and a current accounts payable staffing level of an unprecedented 15 FTE as compared to 4 in 2018

when invoices were paid within 10 days, the agency is unable to pay providers in 30 days or less.

In June of last year, the agency adopted the emergency invoice processing policy to reduce the level of auditing when payment processing exceeds 35 days. According to Director Kampfe, this policy has been continually in effect for seven months, but payment times still fail to consistently meet the 30-day agency goal. No other state government agency in Oregon pays their bills in over 30 days. I can find no other Oregon state government agency with an FTE-to-invoices ratio as high as OPDC. When we raise this issue, the agency has repeatedly raised DAS as an uncontrollable factor in the delay. Let me be crystal clear on the part of me and my colleagues. We have zero problem with the time that it takes DAS to process payments. DAS is consistent and reliable. Raising DAS as a factor in this is a red herring, and we're very tired of hearing the agency raise this issue in response to concerns.

Similarly, we are deeply troubled that the agency has responded to providers with complicated excuses and alternative ways of calculating time between submission and payment. This is wildly inappropriate. The ORS is crystal clear on how time for payments is calculated. The agency is not free to redefine time calculation to justify the inability to process payments in a timely way. We find it terribly ironic that the agency in newsletters refers to the payment time period laid out in the ORS as "recommended" when claiming that they are within the compliance of the statute, but at the same time, the agency has laid out a system for counting days that it takes to process the invoice that is in direct conflict with the definitions in the statute.

As small businesspeople doing our best to help the public defense crisis, we beg of this commission, help us. We have no one else to turn to to seek help for this pernicious problem that forces providers out of public defense and acts as a barrier to new providers starting out. Please do not share with us new and recycled reasons for this ongoing problem. We are asking the commission to compel the agency to share with all of us today what the plan is to reach and maintain 30 days or less as a goal and when it will reach that goal. We ask the commission to have the agency share weekly progress reports with providers and the commission until the 30-day goal is reached and sustained. Thank you and I appreciate seeing our new commissioner who I have known since 2001 when I came to Oregon. Thank you.

Chair Jennifer Nash: Thank you, Mr. Comstock, and thank you for your comments. All right. I can't really comment on public comment. That's not something that we can do, but I will say that we've had discussions about this before, and I think that the commission would appreciate some follow-up information about what is happening and why it is that we are having the difficulty with payment time so

that we can, when we have people reaching out to us independently for information outside of commission meetings that come up, or just so that we know, we can figure out what the situation is and what the slowdown has been and why we're in the situation we're in. And with that, we can move on to the update regarding unrepresented persons in Oregon courts, Mr. Noone and Director Kampfe.

Jessica Kampfe: Good morning, Chair Nash, members of the commission. My name's Jessica Kampfe, I'm the executive director. I'm joined today by Harry Noone, a research analyst with our agency. This is a sad day for us because Friday is Harry's last day with us, and he has been a huge asset to our agency. And over the past year, we have made a great stride in our progress around how we use data and make data-informed decisions. And Harry's presence on our data team has been a big help [Distortion 00:07:34]. We're going to miss him when he leaves. But he is here with us today for the commission meeting, and so we will get to it talking about the unrepresented persons update. Next slide, please.

This first slide shows you the overall trends in the numbers of unrepresented people in Oregon. This is a slide that comes from the Oregon Judicial Department's data. And so what we can see is that with regard to the in-custody unrepresented individuals, that has really remained very steady in terms of the numbers. We've been able to stabilize that population. One thing that you don't see reflected in this slide that is worth mentioning is that at the height of the in-custody unrepresented population, so looking back to July 2023...

Chair Jennifer Nash: Director Kampfe, if I can interrupt you. I don't think it's just me because I see other commissioners leaning forward. We're having trouble hearing you. You're kind of fading in and out. So, perhaps if you moved slightly closer to your microphone, it might help.

Jessica Kampfe: Will do. And I have been having audio problems for the past couple days, so IT was trouble-checking my computer this morning. But if it continues, please let me know and I will ask for help. I'm sure there will be somebody over here quickly. But in the meantime, I'll just get closer. One thing that is not reflected in the in-custody data that you're looking at, but that is true, is that at the height of our crisis, it would have taken us more than 30 days to identify counsel for in-custody people so that people were waiting in our jails a very long time for counsel. I believe yesterday, the average time that somebody waited for their counsel in custody was 15. So, while we've stabilized the numbers, we've also been able to decrease the length of time that it takes for somebody who's in custody to get a lawyer.

When we look at the out-of-custody numbers, we can see that the agency's focus has been on stabilizing and reducing the in-custody population. And so

that has meant that the out-of-custody numbers have risen but does seem to be tapering a bit, and the tapering does coincide with us having our Trial Division fully staffed, so that seems to be at least part of the solution. And we are starting to see decreases in the probation violations. I will also note that our Trial Division has worked with Marion County and is going to be taking 200 probation violations off of the unrepresented list in Marion County. So, I expect that we will see a future dip in the out-of-custody probation violation numbers as well. Next slide, please.

This slide represents the money that has been spent on a Temporary Hourly Increase Program. So, this is the program where we pay an increased hourly rate to investigators and attorneys who take in-custody folks off of the unrepresented persons list. This data shows bills that have actually been paid. So, this is our actuals. This is checks that we have cut, money that has walked out the door, and clients that have been served. So, we can see that the 269 lawyers that have worked in this program have provided representation for 5,112 clients on 7,625 cases. And we can see the fees that have been paid in total, we paid \$28.5 million to lawyers under this program, \$5.6 million to investigators, and \$12.8 million, almost \$12.9 million, to other types of expert witnesses. We can also see the most common types of cases that have been paid under this program. Next slide, please.

This slide represents the Betschart work that our OPDC analysts are doing. So, when a person is in custody without counsel, they become subject to a Ninth Circuit Court ruling that says that if they aren't assigned counsel within seven days, they'll be released from custody. There are exceptions. There are in-custody folks that don't fall within this ruling, but that's sort of the basics of the ruling. So, our team at OPDC has been working to facilitate the assignment of counsel for folks that are potentially subject to this ruling. We can see here the counties that have the most Betschart cases, and no surprise, it's the counties that have the highest unrepresented population. So, we see a high correlation between counties with high unrepresented numbers and counties that have a lot of Betschart cases, which we would expect.

We can also see that our OPDC analysts have been able to assign in total 1,214 cases to lawyers preventing Betschart releases. So, these are cases that were assigned prior to the person becoming out of custody because of the Betschart order. And we are focused on our tier one cases, so these are the cases that would present the greatest public safety risk. So, we've prevented Betschart releases on more than 1,000 cases that would qualify. Those cases have been assigned to lawyers practicing across our service delivery models. So, we've had 135 cases assigned under our contracts to contracted lawyers, 857 assigned hourly. That's largely through that THIP program that you saw a slide on earlier, so you can really see the intersection between how the THIP program is working

and how the state is able to use that program to address the Betschart releases. And 222 cases have been assigned to our state employee Trial Division.

You can also see the case types that have been assigned under the program. We are focusing on those tier one cases, and I would note that we do rank domestic violence cases as tier one cases, which is why you see a large percentage of misdemeanor cases. Next slide, please. All right. That is it for our unrepresented presentation, and I just want to take a moment and thank Harry for all the hard work that he has done to bring this presentation to you to work on these dashboards, and they'll help us develop a way that we can talk about the unrepresented crisis using numbers.

Chair Jennifer Nash: Yes. I echo Director Kampfe's comments and just say what a loss it is for us. We understand that people make decisions and need to make moves for themselves, and we support you in your future endeavors, but we very, very much appreciate all the work that you've done and all the work that you've done to make us go from basically having no data to a pretty sophisticated set of data and be able to answer some very particular questions that we've had. We appreciate your tenure with us very, very much and good luck in your future endeavors.

Harry Noone: Members of the commission, Harry Noone, if I might just for a minute. Thank you for the kind words. It's not just been all me. I have a very bright and capable colleague, Madeline Ferrando, and we've worked very closely to bring, to the best of our abilities, tools inside the agency to measure things that are important to the system at large. So, it's been a pleasure to inform the conversation and thanks again for the kind words.

Chair Jennifer Nash: Thank you. All right. Are there any questions that any commissioners have or any comments about the unrepresented information? Mr. Harris.

Robert Harris: Thank you, Chair. And I also want to thank Harry. I've worked a couple of times with him on helping to get the relevant data for this. It's been extremely helpful, Harry. Thank you so much for your work on this. Anyway, it'll be a great loss for us, but I've also talked to Madeline. She's going to be great as well. A couple of things. I think it would be helpful for me to have a couple of pieces of information here. When we go through this hourly THIP program and even the Betschart cases, it would be helpful to know, in addition to the total case numbers and the summary of cases, to put it in some context for budgetary reasons, to know what the MAC caseload would be of that, the weighted caseload because we could compare that to the actual cost. So, you can instead of saying, "Well, it cost us 25 million," it didn't because if we had those under contract, it would have cost, what, 8, 12, 15? I don't know the answer to that. But we can show the Legislature that it didn't cost \$25 million. There was a

premium on it to get these cases covered, but it was not the full price. I think we've talked about that before, in fact, and I just think that would be helpful.

The second thing is, I noticed at least under the Betschart chart, and I'm sorry, I missed probably the information under the earlier, the total THIP chart, as far as how many cases the state trial offices were taking. It would be helpful to understand why, if these are the state trial offices, they're supposed to be our strike forces that take these difficult cases, they've only taken 17 Betschart cases, while hourly and contract lawyers have taken the vast majority of these. Perhaps it would also be helpful to know which counties those are in that the state trial office has taken. We need to measure the effectiveness of these trial offices, and we can do that, again, by putting it in context. And I think we have the data, the raw data, but if we could put it somewhere where we could look at this and show the Legislature where it's working, how it's working, or how it could be improved, I think that would be really helpful to me, as well as probably the Legislature and LFO as well. Thank you.

Jessica Kampfe: Thank you. And Commissioner Harris, just to clarify, the Trial Division has taken 222 Betschart cases, so there are 17 lawyers in the Trial Division that have taken Betschart cases.

Robert Harris: Okay.

Jessica Kampfe: But they've taken 222 cases, providing representation for 146 clients on the Betschart list. And then with regard to breaking out the THIP cases to show the differential cost as opposed to the total cost, that is something that we could provide to our commission. We have had lots of conversations with our legislative fiscal analyst and received very clear direction that this is a standalone program that the Legislature has funded, and so they want to see the total costs of that program. So, we tag everything that is associated with a THIP case with that tag so that we are showing the full costs of the program for budget reasons within the Legislature. But you correctly identified that the full cost of the program is different than the differential cost of providing representation on those cases. If the commission would find it helpful to see differential costs, we could do that, but that's the reason why we have presented the way that we do right now.

Chair Jennifer Nash: I think to Commissioner Harris's point, if we were able to do an apples-to-apples comparison, about if this were a caseload that was taken under contract, versus this is how much we're paying for 300 weighted misdemeanors, this is how much we're paying under THIP, you could do an apples-to-apples comparison, and it would help us have a conversation with the Legislature about the increased hourly rate stabilization as well. I mean, it would contextually provide a lot of information for us to be able to fully inform the Legislature about what

these cases would have cost if they were under contract versus how they were handled and the success, etc. Right, Rob? Is that what you're saying? Yeah. Okay.

Jessica Kampfe: I'd like to do that, and maybe this is an offline conversation, but I would just note that because our contracts are regional, they're way less flexible than the THIP program. So if we contracted one MAC, right, we're seeing that within the THIP program, we are taking cases in 20 different jurisdictions across the state. That one MAC isn't traveling to 20 different places, and so that's what makes it hard to compare to the contract model. It would be easier to do a comparison to a standard hourly rate model because you still have the individual lawyers that you're working with and that flexibility in there, but we can certainly talk more about how to show these numbers in ways that are helpful for the conversation.

Robert Harris: One thing you could do, and I think I've asked about this information as well, is take the average billable cost of each case type, for instance, misdemeanor, lower-level, higher-level felony, and then figure out how many hours that is and extrapolate that under the THIP program as compared maybe to a MAC. I mean, this is all good data to show. Clearly, THIP and hourly is going to be more expensive than contract. That's why the state pushed contracts 20, 30 years ago and tried to force, and did, in fact, force people to do contracts and get away from hourly. But anyway, that's the data that I think would be valuable as well. Thanks.

Harry Noone: Chair Nash, if I could offer a quick comment.

Chair Jennifer Nash: Sure.

Harry Noone: These slides that are presented on Betschart cases are specifically the cases that have come across the desks of the unrepresented analysts, so it may not be a full accounting of the Trial Division cases, for instance, because I imagine there to be many other cases that don't, so that's just a clarification on that. Thank you.

Chair Jennifer Nash: Thank you. All right, Brook.

Brook Reinhard: I wanted to really echo Rob and Jennifer's comments here. I think it'd be really helpful to get a breakout, and I guess there's several types of breakouts. One I think is really easy and can be done in probably less than an hour's time, which is to just take the MAC value of the cases. We know each MAC is about 240, 230 grand a year, so we could easily see from that what the total price would be if we were to say how much MAC this represented. I continue to think MAC is a horrible metric, I am not endorsing it, I'm just saying that's what the contract is.

And what I feel that we really need to be able to convey to the Legislature is, "This is what you're paying for not giving us more money in a chunk to do this."

Like I'm doing THIP now. I travel to seven different counties. Forty percent of my time on client cases for the state is travel time, and that's not an efficient use of time, and I try to do everything I can to be efficient when I travel, but this is not best practice. It would be far better if we could budget it and say, "Look, Legislature. We know that we need this much more MAC, and it's going to cost this much compared to THIP here. You do have to pay more for it to get it up and running, but once you have it, then you have capacity." But I also agree with what Rob's saying. It would also be nice to just check on case value types, so you know what you're paying for.

Two other metrics I would really like, I would like to know how much of THIP is being taken by attorneys who are already under a MAC contract who certify they can take more ethical cases. I continue to think that is an extremely unethical practice that is not helpful overall and is really undermining the message of making sure we spend quality time with clients. So I would like to know what percentage that is. And then finally, I'd just like to emphasize that I think it's really good that the Trial Division continues to take more cases. It continues to highlight that the MAC model is flawed because, Jessie, when you say the Trial Division is taking 200 more probation violations, that's a lot of cases, but it's actually one quarter of an annual MAC because we have this wild standard that presumes that an attorney can do 825 probation violations in a year. So that's the only things I want to highlight. Thank you.

Chair Jennifer Nash: Very helpful. Thank you. Commissioner Buckley?

Peter Buckley: Thank you. As we're talking about the THIP, I'm curious about the counties that have the highest unrepresented rate and the impact that the program's having on those counties, and I'm not sure whether that was in the data that Jessica showed, but I'd just be curious to see if THIP is being used in those high-need counties in a substantial way.

Chair Jennifer Nash: And one, it was alluded to by Brook, but I also think that it would be really helpful if we could break out how much we're paying for attorney travel time because I think Brook's right that it's a really inefficient use of resources to have a lawyer in Eugene doing cases in Klamath County. I mean, you have to do what you have to do, but then again, if you put a state trial division office – and I'm just making up Klamath County, people – if you put a state trial office in Klamath County, then you're not paying someone to travel to Klamath County because you have a state trial office in Klamath County. So I think that's really important for us to have that information to be able to present when we're talking about expanding state trial offices so the Legislature can understand how much money

we're actually spending paying lawyers to drive all over the state. Even with the system efficiencies that the Oregon Judicial Department has put in place, we're still spending, for remote appearances, etc., we're still spending all this money paying lawyers to drive. All right. Any other comments, questions?

Brook Reinhard: Oh, Chair Nash, one thing.

Chair Jennifer Nash: Yeah.

Brook Reinhard: When I turn in my monthly invoices, I have to break travel time out from the main part, so I know we have that data, and I see Jessie nodding. I know that's data that can be compiled because we're being asked to provide it now, so I think it would be useful to have that. Thanks.

Jessica Kampfe: The travel time's a separate budgetary line item, and we do track that separately, so we can provide that information.

Chair Jennifer Nash: Great, thank you. All right. And with that, we'll move on to the budget update, Mr. Amador and Director Kampfe.

Ralph Amador: Good morning, Chair Nash, Vice Chair Mandiberg, members of the commission. Ralph Amador, chief financial officer for the commission. Excuse my... I got a cough drop in my mouth, so I might sound a little weird at times. This is the budget presentation for the month ending November 2024. I'm going to go through this, and just like before, when I finish a slide, I'll wait about two or three seconds. If there's no questions, I'll move on to the next one just to avoid the awkwardness of being there, and if you have a question, please say so. Okay, here we go, Mara.

So, first area we have are Contract Payments. We're showing about an \$8 million savings here, burn rate of about 67%. There have been some modifications to the submitted plan for the remainder of the biennium for hiring, but we're still in that plan, and this \$8 million should be available for rebalance at the early session. Next slide is Juvenile. We've been showing this Juvenile problem for a while now. We were hoping that it would fix itself. It really hasn't, so this 94,000 will probably have to be part of the rebalance to fix that. That was because of a contract that we added. Because capacity, it is a need. Parent Child Representation, this program is performing as we expect it to. There are still IV-E funds to be brought down. We haven't requested them yet because we're caught up at this time. There will be money here to contribute to the hourly programs when we rebalance in the short, I'm sorry, early session rebalance. Sorry about that.

Preauthorized expenditures, again, we're still projecting a \$9.3 million problem. Main drivers are psychological services, expert services, and travel for all service providers. Agency is still finding that using a six-month rolling average to forecast is about the best way of doing this because of all the changes. We're still watching this. This will be one of the issues that we will be trying to fix in the early session rebalance. Court Mandated Expenses, again, same issue, \$9.1 million problem. As we're assigning more cases here, hourly and THIP billings and travel expenses remain high due to monthly billing processes and other policy changes. The December E-Board will add \$7.1 million to this budget. So that will be reflected in December, which is presented next month. December just closed this weekend, so we'll be able to update that. But again, \$7 million will be put here, 4.7 comes from rebalance that's moving other money from other parts of the agency, and 2.4 comes from the SPA.

Pilot Project – Trial Services. Here, this is performing as expected. This 1.6 should be available for helping out in the rebalance. Appellate Division, no issues here. Again, there's nothing really to see here, other than they're moving along forward as they should. Compliance, Audit, and Performance, again, same old boring program, 52% spend rate. It's just treading along, and we'll be able to keep going from there. I'm being facetious with boring, but they're doing good. Administrative & Executive Divisions, this is without the Financial/Case Management System, that's its own slide, but they're showing a savings here as well. This is just vacancy savings and contracts that haven't been deployed at this point. We're moving along here. They still have money, but I think about 800,000 is going to be moved in the rebalance.

Financial/Case Management System, these savings continue to grow. We're moving about \$2.4 million out of here in the rebalance, which will be, again, shown in December, but we're not spending money because we haven't ... You'll hear a presentation about the Financial/Case Management System later, about the RFPs closed, so we hope to be spending money in the coming months with this one right here, and we have money planned here, but savings continue to grow here.

Special Programs, this, again, is our discovery area. We've went through to try and figure out, be more predictive on what we expect for discovery to go forward, and we're seeing if we spend, and according to plan or according to what we can historical, that 600,000 is the problem going forward. But again, we'll continue to pay as we have funding, and then we'll talk to LFO, CFO, and see if we can put more money in here as part of our rebalance as well. That'll be a discussion point. And agency overview, we're at 1.5 to a problem area at this point. We're adding, again, \$2 million to this area, so next month's should look decidedly different with the addition of the SPA money, but I think we're doing fine at this point.

Chair Jennifer Nash: Thank you, Mr. Amador. Does anyone have any questions? All right, no questions, it looks like. Thank you very much for the information. We appreciate it.

Ralph Amador: Chair Nash?

Chair Jennifer Nash: Yes?

Ralph Amador: Pardon me, I have a bonus presentation for you as well.

Chair Jennifer Nash: Oh, okay.

Jessica Kampfe: And I'd just like to help set up the bonus presentation. The budget shop has had a lot of big projects that we've been working on this time of year, and so coming out of the December Emergency Board, the budget shop, first of all, has been working on reconciling the Governor's requested budget. The Governor issues her requested budget in December, and then our shop has to go through and line by line reconcile that budget. And so you're going to hear from Mr. Amador on the Governor's recommended budget and the work that we've been doing to reconcile that budget.

The budget shop is also pivoting to, and I think you heard Mr. Amador say, early session rebalance, and so one of the very next things that we have to do is to submit our early session rebalance. We had initially thought about and talked to this commission about doing a complete rebalance in front of the December Emergency Board, but as we talked more with our Legislative Fiscal Officer, it was clear that there were a lot of questions about sort of the spending within particularly the THIP program and wanting to make sure that we were fully covering our expenses in any rebalance and not going to be coming up short towards the end of session. And so what we ended up doing was doing a partial rebalance in December in front of the Emergency Board with an understanding that we would have to come back for an early session rebalance.

We are in the process of working through that right now. We will have to have that in to our CFO because now we are in the executive branch, and so we work with the Department of Administrative Services' Chief Financial Officer as well as with the Legislative Fiscal Officer, so this is a change for the agency in the resources that we have around budget. So this month, we have to get our rebalance information to the DAS CFO. And then in early February, we have to submit our letter to our Legislative Fiscal Officer to get it in front of the Legislature. The timing on this rebalance is not a great fit for our commission meetings because this is the last commission meeting that you all have with us before we have to start turning that stuff in, which means that we're not going

to be able to bring those documents in front of the commission. We will have some opportunities to talk with you all about those documents, and in my director's notes I'll mention this again, but we have started a commission workgroup, so that might potentially be an opportunity for us to talk with the commissioners about it. And I believe that the Legislative Subcommittee has a meeting scheduled before we have to submit those documents, and so there may be an opportunity to talk with the Legislative Subcommittee about those documents before they get submitted. But I just want to flag that for you all. So, the thing that the budget shop is pivoting to right now to be working on is that rebalance piece.

And then the next thing that we will have coming up, and you'll hear more about this in presentations to come, is our big presentation to the Legislature in March about the agency's proposed budget, or sorry, the budget for the '25-'27 biennium. And so we are starting to work up the budget presentation for that, and that is based on the Governor's recommended budget. And so Ralph has put together some slides from the reconciliation process, and we're going to talk with you all about what we are seeing in the Governor's recommended budget. All right, Ralph, we've got the slides. Okay. So, this is a presentation on the Governor's recommended budget. Ralph, are you there with me? Are you walking through this, or you want me to walk through it?

Ralph Amador: I can walk through, either way.

Jessica Kampfe: Okay.

Ralph Amador: Governor's budget, high level, showing the highlights of what's going there. Next slide, Mara. So, these are the numbers. The Governor's recommended budget represents a 17.3% funding increase over the legislatively approved budget for '23-'25. There's a general fund increase of \$94.7 million, and a total fund increase of \$106.1 million. It also represents a 74.9% position increase. That sounds like a huge number, but the majority of those positions are with our state-level trial offices. There's about 100 positions associated with that. So, just to show a recap. Next slide, please.

So, first thing we'll talk about is the reductions, and by statute, agencies must prepare a current service level reduction list as part of their budget bill. And then the Department of Administrative Services Chief Financial Office uses that list to take reductions as necessary to support the Governor's budget goals. For our reductions, we had a reduction in mandated caseload, and that was primarily because our forecast in October went down. So, we had to take some money that we, in our current service level, we had put forth a mandated caseload number, but we had to reduce that because the forecast went down. We will have to start doing vacancy savings now, and we haven't done that

before. And vacancy savings are, the agency has to hold a certain amount of positions vacant in order to save money across the agency.

This is something that's done through all agencies. We just weren't subject to it before. We're taking a reduction in services and supplies that's across the agency, and that does affect provider rates and everything else, just because that's where 94% money goes out the door at this point. So, that's where it has to go. There are reductions in S&S for all of the areas in the agency, but that's basically what it is. We requested some inflation across the board. There was a 4% standard inflation, 6% for professional services, and the Governor's budget took that inflation out. And then finally, there were some statewide adjustments, that as they're making adjustments to the DAS budgets, there's statewide adjustments for aging and stuff like that. So, \$57 million of total reductions were taken for the Governor's budget. Next slide.

That takes us to the investments that we're putting into the Governor's budget. The first level was the Emergency Board. We added back in the Emergency Board areas. We had some positions added in our Emergency Board and some funding added. The Governor's office approved POP 101, which is the Financial/Case Management System for 16 million total funds, added eight positions. POP 103, direct representation investment, which is the state-level offices, \$27.2 million was added, 113 positions. Service provider rate stabilization was POP 104. So, they approved \$37.9 million to our service rate provider stabilization POP. And POP 106 was also added for a robust agency support desk to get the positions we need into the agency so we can move forward with building projects and policies going forward, added 15 positions. The THIP carryover of 26.8 million was approved, which was POP 107, so that we can pay for the residual effects of THIP going forward from here, for the last two extensions that happened. And then the Chief Financial Office and the Governor's office also threw in an additional investment of \$18.9 million to carry THIP for the remainder of the 2025 calendar year. So, from July through December of next year.

So, the total investments that the Governor's budget is providing for this agency is \$132.6 million, 41 positions, and 107 FTE. So, that right there is what we're going to base our Ways and Means presentation on, as Director Kampfe has said. And that's the end of this really quick presentation to give you an overall look at the Governor's budget. Thank you.

Chair Jennifer Nash: Commissioner Buckley.

Peter Buckley: Thank you. Just to note, the Governor's budget doesn't include funding for the law clinics. And that is something, the agency has to testify on behalf of the Governor's budget, about the – we're part of the executive branch – but

commissioners can lobby for the law clinics individually, or as a commission we could state a position of support. But I'm concerned about the law clinic funding, that we're just getting the expansion going. Obviously, we need the law clinics' vital ability to recruit attorneys into the system. Thank you.

Chair Jennifer Nash: Thank you. Anyone else have any questions or comments about the Governor's requested budget presentation information? Okay. It doesn't look like there are other questions or comments. All right. So, Mr. Amador, do we have a second bonus or is that it for you about the budget today? [Laughter]

Ralph Amador: That will hopefully be the last time you hear from me today, Commissioner Nash. Thank you.

Chair Jennifer Nash: Thank you. All right. Thank you for the budget information. And then the next item on our agenda is the OPDC Audit Committee policies, Mr. Martin.

Scott Martin: Good morning. Can you hear me okay? Very good. Okay. I've got two policies to present. Well, first, Chair Nash, thank you for allowing me to be here today. Also, Vice Chair Mandiberg, Director Kampfe, and members of the commission. It's my privilege to present some policies today that I think will be helpful to internal audit. The first is the Risk Assessment Policy. Another one is a Report Distribution Policy. And I'll just read my memo real quick. Forgive me also, I'm getting over a cold as well.

The internal Risk Assessment Policy, the background for that is ORS 184.360 paragraph four requires an agency of the executive branch who meet the criteria for inclusion of an internal audit function to produce a risk assessment of the entire agency. The risk assessment must conform to the standards of the United States Government Accountability Office or the Institute of Internal Auditors. Completed risk assessments are used as the basis for selection and performance of at least one internal audit per calendar year. This policy provides a comprehensive reference of the statutes and rules to be applied when completing the agency's risk assessment to include roles, responsibilities, inputs, and reporting requirements.

Agency recommendation, as the agency matures and has greater expectations placed upon it, the need for timely identification, prioritization, and control of risk becomes of paramount importance. This policy outlines the collection of relevant stakeholder inputs, frequency, and reporting for the timely identification and evaluation of risks in support of the agency's mission. I don't foresee any fiscal impacts with this policy, and this has been vetted by both the Audit Committee, members of the executive team, and myself, I think, and we all recommend adoption of this policy. That is all I have, if there's any questions on this policy.

Chair Jennifer Nash: Are there any questions, any concerns about the policy? All right. This is an action item on our agenda, so we will need to take a vote on, and I will need a motion.

Robert Harris: I move to adopt this Internal Audit Policy as presented.

Chair Jennifer Nash: Thank you, is there a second?

Jennifer Parrish Taylor: Second.

Chair Jennifer Nash: Okay. We have Commissioner Harris who made the motion, and Commissioner Parrish Taylor who seconded the motion, and we will need a roll call vote.

Mara Hoaglin: Commissioner Nash?

Chair Jennifer Nash: Yes.

Mara Hoaglin: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Mara Hoaglin: Commissioner Parrish Taylor?

Jennifer Parrish Taylor: 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 very much, motion is passed.

Chair Jennifer Nash: Thank you.

Scott Martin: Thank you.

Chair Jennifer Nash: Next, moving on to the Internal Audit Report Distribution Policy.

Scott Martin: Thank you, Chair Nash, Vice Chair Mandiberg, Director Kampfe, and members of the commission. Again, this is another policy that's similarly been vetted by the Audit Committee and executive team, and we're going to recommend this one for your review and ratification today. I'll go ahead read through the memo I've prepared for it.

ORS 192.340 paragraph 37 exempts the public disclosure of audit documents and related information of a public body while in the custody of the auditor and when following nationally recognized government auditing standards until a final audit report is issued or the audit is abandoned. Exceptions to this exemption are issued on a case-by-case basis by the applicable legal authority after evaluating the requester's need for disclosure and impact to public interest. The policy outlines the collaborative vetting and protections afforded internal audit report drafts and related content prior to final report issuance and distribution.

As the agency's internal auditing function engages with staff to complete planned audits, shared collaboration and trust is key to ensuring the conditions under audit are correctly represented. In recognizing that collaboration is a byproduct of trust, affirming existing protections for the confidential sharing of information to form an objective assessment of a condition is of utmost importance. This policy seeks to provide transparency in the audit reporting process and the stakeholders it informs to build trust and collaboration within the agency. I don't foresee any impact fiscally to this policy adoption, and I request your approval and ratification.

Chair Jennifer Nash: Thank you. Is there a motion to approve the Internal Audit Report Distribution Policy?

Robert Harris: Commissioner Harris so moves.

Chair Jennifer Nash: Second?

Susan Mandiberg: Second.

Chair Jennifer Nash: Commissioner – I was like, who said that? Commissioner Mandiberg, Vice Chair Mandiberg seconds the motion, and we will need a vote, Mara.

Mara Hoaglin: Okay. Commissioner Nash?

Chair Jennifer Nash: Yes.

Mara Hoaglin: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Mara Hoaglin: Commissioner Parrish Taylor?

Jennifer Parrish Taylor: 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 very much, motion has passed. Thank you very much.

Scott Martin: Excellent. Thank you.

Chair Jennifer Nash: Thank you, Mr. Martin.

Scott Martin: Thank you.

Chair Jennifer Nash: All right, moving next to an action item regarding the Interim Hourly Attorney Policy, Ms. Flowers.

Shannon Flowers: Thank you. Good morning. Chair Nash, Vice Chair Mandiberg, and members of the commission, I'm Shannon Flowers. I'm the trial support and development manager at OPDC. We have two policies. Mara, if you want to go to the next slide. Thank you. We have two policies that are coming before you today. I'll start with the Interim Hourly Attorney Policy. Mara, next slide. This is our

Interim Hourly Attorney Policy. And essentially, historically, attorneys providing public defense representation at an hourly rate were a very small percentage of the work that was happening representing individuals in public defense cases, and that typically occurred when there were contract attorneys who had conflicts of interest and occasional capacity issues. We've seen a lot of growth in our attorneys working hourly and providing representation at an hourly rate over the last three years. That's substantially related to the unrepresented persons list and sort of working through that list and our Temporary Hourly Increase Program. But with that growth, we've also seen a lot of attorneys taking cases at OPD's standard hourly rates for attorneys.

Under THIP, part of the requirements for an attorney to take cases under or accept appointment to cases under that program, two basic requirements are that they need qualifications that have been approved by OPDC, under THIP that's a two-year period so they need to have been approved within the previous two years, and an agreement with OPDC to provide legal representation clients what we call an hourly agreement. This Interim Hourly Attorney Policy would extend those two requirements to all representation provided at hourly rates, including at our standard hourly rates. And with the one exception is really the period for qualifications to be current is three years under this policy rather than two, and that's really just to allow more flexibility.

We've learned a lot over the last few years. When we're putting things in writing, I think we try to start from a fairly conservative place, see how things will go, and adjust as we learn more and grow. So, that's the policy overall. Yeah, I think that's all that I have to share about it. I'm happy to answer any questions, but we do recommend that the commission adopt this policy. It's one step towards really getting a handle on that body of work being done hourly and understanding who's doing the work and when that's happening.

Chair Jennifer Nash: All right. Does anyone have any questions about the policy? Commissioner Mandiberg?

Susan Mandiberg: Yes. Thank you, Ms. Flowers. This is interim, so what are the plans going forward?

Shannon Flowers: I think one of the things that we really want to and I think need to get a handle on are not just the attorneys who are providing that representation, but really knowing all the cases, who is being appointed, when that's happening on the front end. And really, sort of as background and context, one of the things that we know happens at least some of the time is that courts are appointing cases, and we don't necessarily at the agency know that that's occurring until we get a bill. And so this is to help make sure that we know who the attorneys are and that we've got some basic requirements. The other piece is that this is really

consistent with what our practice has been, that when we have an attorney that's new to the system, if they are not taking THIP cases under that policy, this is part of our practice anyway. And so really the policy is helping formalize that and make sure it's in writing so that people are aware.

I think longer term, one of the things that the agency is looking to is to be responsible for the case assignment process on the front end, and we're working through those things, figuring out how that will happen, but that will help us identify and really understand and be able to project where people are getting paid hourly, what is happening in those cases, so that it really impacts our long-term sort of budget planning and also our oversight responsibilities.

Susan Mandiberg: So, are you suggesting that judges will be made aware of these requirements...

Shannon Flowers: Yes. I am.

Susan Mandiberg: ...so they appoint lawyers who meet the requirements?

Shannon Flowers: Yes. And also I think we'll, as part of our newsletter, we'll look at communicating this out in as many places that we can so that judges are aware, attorneys who may be interested in taking on some hourly work to help address the representation deficiency, that they are aware of these requirements. And the policy has some flexibility built into it that if somebody takes a case and they haven't sort of met these two requirements prior to being appointed, and say it's one of those situations where we don't really learn about it until the bill is received, they just need to get these done before, that we can pay them and we'll work with them to make sure that we support them in doing that.

Susan Mandiberg: And so they will know that when they take the case?

Shannon Flowers: That's our hope, but I mean, I think we anticipate that there may be instances where people don't get that information, aren't aware of the policy on the front end. We'll be doing our best to communicate that out, like I said, in as many forms as we can to make sure we've done what we can to make sure people are aware of the requirements.

Chair Jennifer Nash: Director Kampfe?

Susan Mandiberg: So, let me just ask?

Chair Jennifer Nash: Oh, sorry.

Susan Mandiberg: If they've done the work, what if they can't meet the requirements?

Shannon Flowers: I mean, I think that's... I don't know if Director Kampfe has... I heard Chair Nash sort of indicate that Director Kampfe may be interested in weighing in here. I think that's one of the things. We have seen on occasion somebody has taken a case, and they aren't qualified. Typically, they can be qualified, but not in every instance, and I think we have to figure out how we address that. I think longer term, we want to make sure that people are only appointed and assigned cases for which they're qualified. So, I think the working towards that longer term and figuring out how we implement that to make sure that that's happening.

Susan Mandiberg: So, that's partly why this is interim.

Shannon Flowers: Yes, exactly.

Susan Mandiberg: Got it. Okay. Thank you.

Chair Jennifer Nash: Director Kampfe?

Jessica Kampfe: Thank you. And thank you for those questions. This is an interim policy that is intended to chip away at a larger problem, and so when we look at the sort of what the problem is, OPDC does not at this point in time facilitate the appointment of counsel except in limited cases. And those limited cases are really the folks who are on the unrepresented list and the four program analysts that work within our office to help appoint cases statewide. Ideally, we would be involved on the front end with the assignment of counsel process, but because we aren't, one of the things that we have seen happening is that oftentimes lawyers are appointed hourly to cases in the courtroom, and OPDC doesn't find out that the lawyer has been appointed to the case until we start receiving bills, and that's the first time that we learned that this hourly lawyer has been appointed to the case. And so this interim policy looks at making sure that we've got some basic, really basic oversight over the lawyers that are getting appointed hourly. And this is outside of the Temporary Hourly Increase Program because when the commission passed the Temporary Hourly Increase Program, the commission passed policies around that program that required a number of things, including that OPDC know on the front end. So, this is those hourly cases that are being taken outside of the Temporary Hourly Increase Program.

So, the basic things that this policy is requiring is first of all, that the lawyer who's providing representation to that client is qualified to provide representation to that client. So, they've met the qualification standards for that case type. And second, that they have an agreement on file with us to provide legal representation to hourly clients. So we know who they are, we know they're practicing in Oregon, and they have a basic agreement on file with us. There are a lot of things that are not yet addressed in this policy, and that is why

it's an interim policy. We are moving in the direction right now of building out a panel of hourly attorneys, and we are working with project managers and experts and folks within the agency, as well as engaging with stakeholders to build out that panel. And we expect to come back in front of you all with a more robust policy that reflects the assigned counsel programs, the developments that happen within that assigned counsel program.

We would like that policy to include requirements that OPDC be notified on the front end. The reason you don't see that here now is in part because we don't have the... One of the things that slows down our payment times in accounts payable is having to verify that the lawyer has been authorized for a particular hourly rate on the front end. And it would create more delay in us paying our bills right now without putting more business practices in place in the agency to be able to accommodate that requirement. And so we aren't ready to do it yet, but we're seeing it as a need and we're building towards addressing that need.

The other need that we are seeing that we're working towards addressing is our contractors provide us right now with caseload reports. Every month they send in their caseload reports, and those caseload reports are used to do things like populate our dashboard, our public-facing dashboard on MAC utilization. Our hourly providers don't provide us with caseload reports right now, and we want to work to a place where we are getting reports from hourly providers as well. That's going to require training and working with the hourly providers and infrastructure within the agency. And so this is an interim policy. We will be back in front of you with a more robust policy in the future. We know this doesn't address all of the questions, but it's a first step in the right direction.

Chair Jennifer Nash: Are there any other questions? All right. I have some questions. When is this policy going to go into effect? I have some concerns about passing this policy today and then having a body of lawyers who are doing hourly work, who all of a sudden have to, as of today, have these signed agreements in place or their bills won't be paid. I'm much more comfortable with having this be a prospective policy that goes into effect 30 days from now or something. And then with you telling us some concrete steps that you're going to take to ensure that everyone who you know about who has an hourly case now can get these in place, so that when they submit their bills, their bills aren't being delayed even further because they don't have an hourly agreement in place, that they didn't know they needed to have until they submitted a bill. So, can you talk a little bit about that?

Shannon Flowers: I'm happy to. I don't think the policy included in the materials actually has a date on it, it might, as far as a proposed effective date. I would defer to Director Kampfe on when we actually need to make this effective. From my perspective, I think we have some flexibility. We haven't had a policy, and I do think it's

important to make sure that people are aware that we've communicated with OJD and courts throughout the state that we've done our very best to communicate out to attorneys generally who may be looking to take cases, or as you said, may already be on cases and not have an agreement and qualifications approved with us. I think probably the next month, those are things that can be addressed. We would need to work, I think, with our communications person on putting together a concrete plan, but we are in regular communication with OJD about these sorts of things. I don't know that we've actually discussed this particular policy.

So, there are some unknowns as far as how many cases or how many attorneys in this posture who don't have approved qualifications and an agreement already on file with us who may be impacted. But based on what we've seen over the last few years, I think the universe is relatively small there, but again, we don't know what we don't know. So, I think making it effective at the beginning of March, there is some wisdom in doing that from my perspective, but I would defer to Director Kampfe.

Chair Jennifer Nash: I'm much more comfortable with having this be in effect in the future, and I would also be much more comfortable with voting on this if we knew how many, or at least had some rough idea about, at least from what you know so far, how many people you're talking about. Because here's my other concern. If you don't know how many people you're going to have to reach out to, are you sure that you have adequate staff to be able to do that between now and when the date it goes into effect? Because this is, I mean, I think I can probably speak for all the commissioners to say what we don't want to have happen is to vote on a policy that goes into effect and then have lawyers who are getting paid even longer payment times because they didn't know that this policy needed to be met. And now they've submitted their bills and now they're getting some communication after they've waited for 30, 40 days and their bills are getting ready to be paid. Oh, gosh, sorry, we don't have this agreement. So, now you have to get this agreement in place and now your bill goes to the back of the line after you get this agreement in place and now we're looking at 60, 70, 80 days before somebody gets paid, which is just not okay.

So, I don't know how other people feel, but I would be much more comfortable about changing the policy to take that into account or making it prospective, and then with direction that between now and the time that the policy goes into effect, you – everybody, not you Ms. Flowers, just to be clear – that you reach out and proactively contact all lawyers that you know have submitted bills or that you know at least currently are appointed to cases, and also a communication to OJD that has judges understand that when they appoint, they need to direct the lawyers to get in contact with OPDC. Jasmine, you had your hand up first.

Jasmine Wright: Sure. So, I don't want to micromanage the agency, and I don't want to say that this policy doesn't have value because it does, and I understand that. But I guess I want to question whether or not how many [Distortion 01:07:45] that we have working for us or that we have contracting for us that don't have qualifications approved by OPDC, that haven't been approved by OPDC within the previous two years. And the reason I say that is that I don't think there's any urgency to do this policy in the next 30 days or in the next 10 days or in the next 15 days. So, I'm not saying that there's not a reason to have a policy that makes sense and to standardize practices and policies. In my history with HR, I certainly have a familiarity and a comfort with policies and procedures. I love policies, and I think the agency should have those, but I'm saying we don't have to be Wile E. Coyote and speed our way through this process. Especially at the cost of providers and attorneys, especially sole-practitioning attorneys, and maybe some of our attorneys have different financial abilities than others, at the cost of them being able to pay their support staff or themselves.

So, I would agree with Chair Nash and suggest that we need to slow the process down a little bit more, be a little bit more [Distortion 01:09:05] of how we're doing this. And I would push back a little bit in terms of I don't think we have that many providers. I mean, I've worked throughout the state, and our judges know [Distortion 01:09:20] attorneys that they're appointing cases, crap attorneys for the most part to their cases. Sometimes they'll appoint attorneys they don't know, but for the most part, I don't think there are a whole lot of attorneys that are being [Distortion 01:09:35] have minimum qualifications on them. I think the biggest [Distortion 01:09:42] for this policy is to have standardized practices and procedures that the agency can track and can maintain as we get to the panel process that we're entering into in twenty [Distortion 01:09:52] think there's any reason why we have to enter into this interim policy in the next 15, 20, or 30 days. That's my only comment.

Chair Jennifer Nash: Thank you. Commissioner Mandiberg?

Susan Mandiberg: Well, thank you. Just one more concern, or maybe it's a continuation of the same concern. The more I think about this interim policy creating potential problems, I understand that we need policies about this, and I think this is a good first step, but I've heard enough judges sound kind of desperate when they're looking for a lawyer to appoint and don't seem to be able to find someone within their jurisdiction who is able to take the case. And I think I, having never been a judge, but I think I can understand the desperation a judge must feel when they need to find a lawyer for somebody and can't find one who is the best and may feel like they need to take a chance on someone they don't maybe know. So, when you say you communicate with the OJD, you're relying

on someone in that bureaucracy to get in touch with individual judges and make sure that they have a way to handle those kinds of situations.

Perhaps Judge Lipscomb could shed some light on what that must be like as a judge, but is there a way for, if this policy does get adopted now or soon, is there a way for OPDC to communicate specifically with judges? As opposed to going through the bureaucracy of the OJD. So that judges not only know what the qualifications are in the policy but also know what to do if they cannot find a lawyer in their jurisdiction who meets the qualifications. I think we have to give judges a way to solve that problem. Otherwise, they'll appoint whoever they want to appoint, and that person may not be able to then meet the qualifications that OPDC has in place. So, is there a way to come up with a plan to help judges deal with this? I guess that's what I'm asking.

Shannon Flowers: Vice Chair Mandiberg, I think there is. I do think probably... We try to coordinate these sort of policy implementation things with OJD, but certainly we have program analysts and other staff who are communicating with judges and court staff directly in the jurisdictions that they help to manage. So, I think, I mean, I would suggest that perhaps, and I think we want to talk with OJD about how to approach things, but I would suggest that we can probably take a two-pronged approach of really working with OJD, but also potentially communicating directly with courts. And again, doing our best to identify who may be out there appointed on a case and not have these two basic requirements satisfied. I will say, I would agree with Commissioner Wright, that that universe, I think, is probably fairly small based on what we've seen over the last few years. It's only on occasion that it's come up where somebody, frankly, doesn't have OPDC-approved qualifications or not within a more recent timeframe. Sometimes those are people who have done public defense work in the somewhat distant past, and it's good to sort of update and make sure that they still have what they need to be able to provide competent and effective representation in the cases that they're assigned to.

Occasionally, we have seen somebody who is new to the system, sort of that situation where a judge pointed to somebody in the courtroom and said, "I'm assigning you," and sort of didn't maybe worry about it beyond that, whether there might be some other requirements. So, I think it's working with our staff internally, certainly our communications person, but we also have staff that are meeting with OJD staff regularly. So, I think, again, coordinating an approach with them is probably going to be the most effective. That may take a little bit of time.

Chair Jennifer Nash: So, I'm going to call on you, Rob, in a second, but if I might make a suggestion, if other commissioners think this might be a good idea, we can pass this policy and just make it in effect April 1st. I'm a little concerned, March 1st is six weeks,

and I know the agency's got a lot going on between now and the middle of March. And if we make it effective April 1st, that'll give time for the agency to do all of the legwork, communication, get all the information out to providers so that when this goes into effect, we communicated directly with the people that we think are in that universe so that there's no delay in payment processing.
Commissioner Harris.

Robert Harris: Thank you. Just two thoughts. The first, the other comment that was made, what happens if someone's not qualified or cannot be qualified, but they've been working on it? You might want to consider that making this part of the policy and the process, frankly, on that under statute would be the lawyer can file an appeal to the judge that appointed them, and the judge can order the agency to pay. I think that's a statutory process, but maybe what we do is, as a matter of policy or consider as a matter of policy, something to the extent that if the person does not meet the standard qualifications of the agency, that they can still pay them, compensate them for the work performed upon the recommendation of the judge that appointed them. Something so we have a default permission to say, "Yes, we can pay these people."

Secondarily, as far as getting information out, it seems like every presiding judge or state court administrator should have this information. And there's probably a process through the state court administrator's office or the judicial conference where the agency can either put a deck together or do a 15-minute presentation about how to get the right people appointed, and then we would get the information in there. And I think April 1st probably sounds like a good date to me too. I was thinking about 60 days, and I think that would put it out there a little beyond that. So, I would agree with that.

Chair Jennifer Nash: Okay. Any other comments or questions? Okay. So, I think procedurally the way we have to do this is... Well, I think we can just make a motion with the amended language. I don't think we have to do an amendment. So, is there a motion to adopt this policy effective April 1st, 2025?

Susan Mandiberg: So moved.

Chair Jennifer Nash: Commissioner Mandiberg makes the motion. Is there a second?

Tom Lininger: I'll second.

Chair Jennifer Nash: All right. Commissioner Lininger seconds. And is there any further discussion before we take a vote? All right. We're ready for a vote.

Mara Hoaglin: Okay. Commissioner Nash?

Chair Jennifer Nash: Yes.

Mara Hoaglin: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Mara Hoaglin: Commissioner Parrish Taylor?

Jennifer Parrish Taylor: 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, motion is passed.

Chair Jennifer Nash: Thank you. And Ms. Flowers, thank you for the policy and presenting the information and being flexible and understanding about our questions and our concerns. We really appreciate it. And I know that you're also going to be presenting an action item to us about contract funding for the Supervised Practice Portfolio Policy, amending that.

Shannon Flowers: Yes. Chair Nash, Vice Chair Mandiberg, members of the commission, the second policy that I'm bringing before you are changes concerning our SPPE contract funding policy. SPPE is the Oregon State Bar's Supervised Practice Portfolio Examination Program. That began back in May, I believe, of 2024. In June of 2024, this commission adopted a policy which allowed the agency and contractors to fill 1.0 FTE vacancies in contracts with provisional licensees under the SPPE program. And again, the SPPE program is really an alternative pathway to the traditional bar exam to get lawyers into practice. There's a lot of supervision and oversight that the bar provides around that. The person is supervised. It's essentially an apprenticeship program.

When this policy originally came before the commission in June, I think commissioners, there was some concern expressed about sort of these limitations around filling vacancies and being a 1.0 FTE under the contract. We started there really. Again, it was a conservative approach. It's a new program, not just for the Oregon State Bar, but Oregon is sort of in the lead on developing programs like this. I believe this is the first one in the country like this. So we started in a conservative place, but I think what we've seen over the, well, since June when this policy was adopted, that there is a lot of desire for provisional licensees to begin working in public defense practice. And that's consistent with how the bar approached developing the program. Really, it's not solely focused on public defense work, but again, allowing an alternative pathway to help increase the public defense workforce among other parts of the legal profession as well.

So, the two policy changes that we have before you, it's really removing that 1.0 FTE vacancy filling requirement and to keep some sort of parameters on and some oversight over what's happening. Because one of our concerns in including those limitations was making sure that the agency was able to be good stewards of public funds, and that the work that was being done by provisional licensees that OPDC is funding, that it is really going towards public defense representation. And so the way we're addressing that through the update to the policy would be adding a requirement that the supervising attorney for that provisional licensee submit an affidavit or declaration to the agency at two points – when the provisional licensee submits their interim portfolio, and then when they finish the program or at the end of the program, they're submitting their final portfolio. At those two points in time, the supervising attorney would submit a declaration or affidavit to OPDC attesting that the time funded was spent on public defense. I'm, again, happy to answer any questions about these changes or the policy generally, what we've seen over the first, what, six months or so of this policy being in effect. But we would ask that the commission approve this policy.

Chair Jennifer Nash: Thank you. Commissioner Lininger.

Tom Lininger: Ms. Flowers, thank you for presenting these amendments to us, and I feel good about OPDC's funding of SPPE provisional licensees. I know we were cautious last summer, and I think the program shows a lot of promise for the two reasons you mentioned. First of all, helping to plug some of the gaps in indigent defense, but also helping to diversify the bar. I teach at a law school where I've noticed that the conventional bar exam does not allow an optimally diverse group of students to progress to practice and there is some interest in doing public defense work among these diverse students and I'd really like to facilitate that. So, focusing on the actual language you have in mind, I do think it's a good idea

to allow SPPE provisional licensees to work at less than 1.0 FTE for the reasons you mentioned.

I mean, I think, first of all, on the licensees, and it may not always be possible or desirable to limit that work to 1.0 FTE, I might even suggest we consider going further in liberalizing the use of our funding for SPPE provisional licensees. And just looking over the policy, one area where – I mean, this is not an amendment for today, but I'm just suggesting for the long term – I think we might think about liberalizing a bit the supervision requirement. So, if I understand correctly, right now, the supervision requirement is that in criminal cases, we need a supervisor with three years of experience at the major felony level to have any role in supervising an SPPE provisional licensee, but I'm guessing these licensees are mostly doing misdemeanor work, and so I wonder if we might consider changing that so that someone with three years of experience in misdemeanors could be the supervisor. Unless, of course, the work entails any risk of conviction for a felony, in which case we would have that unique supervision requirement that requires felony background on the part of the supervisor. I just think we should maximize the breadth of this pathway and thank you very much for your work on this policy.

Chair Jennifer Nash: Any other questions or comments? Scrolling on the top because everybody's up top. Doesn't look like it. All right. Well, thank you again. Yes, I echo Commissioner Lininger's comments. Thank you very much for your work on this, and I think his comments about considering changing the supervision requirements going forward make a lot of sense. I mean, three years practicing whatever you're supervising. So, if it's misdemeanors, lesser felonies, major felonies, whatever, but I think that makes a lot of sense for future consideration. All right. With that, do I have a motion to adopt the changes listed in the memo provided on January 15th, 2025, and outlined by Ms. Flowers to the SPPE payment policy?

Peter Buckley: So moved.

Chair Jennifer Nash: Commissioner Buckley makes a motion. Is there a second?

Susan Mandiberg: Second.

Chair Jennifer Nash: Commissioner Mandiberg seconds. We're ready for a vote.

Mara Hoaglin: Thank you. Commissioner Nash?

Chair Jennifer Nash: Yes.

Mara Hoaglin: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Mara Hoaglin: Commissioner Parrish Taylor?

Jennifer Parrish Taylor: Yes.

Mara Hoaglin: Commissioner Lipscomb?

Paul Lipscomb: Yes.

Mara Hoaglin: Commissioner Buckley?

Peter Buckley: Yes.

Mara Hoaglin: Commissioner Harris?

Robert Harris: Yes.

Mara Hoaglin: Commissioner Lininger?

Tom Lininger: Yes.

Mara Hoaglin: Thank you very much. Motion has passed.

Chair Jennifer Nash: Thank you. Ms. Flowers, are you ready to present on our next matter, which is the core staff role definitions?

Shannon Flowers: I am happy to proceed with that one too. We're ready.

Chair Jennifer Nash: Hold on. Let me take a look. Let me count really quick. One, two, three, four, five, six. Okay. We still have a quorum. All right. Yes. Thank you. Oh, this is a briefing anyway, not a voting matter. Yes. Thank you.

Shannon Flowers: Chair Nash, Vice Chair Mandiberg, members of the commission. Again, I'm Shannon Flowers, the trial support and development manager with the Oregon Public Defense Commission. You have before you today in the materials, our draft Core Staff Role Definition, Qualification Standards and Performance Standards document. It's a pretty substantial document. Mara, if you want to skip ahead two slides.

So, just starting with sort of why this work, where does it sort of fit within all the things that the agency has before it to accomplish? Really, with sort of statutory changes that have happened over the last few years, OPDC has really moved

from being a funding pass-through agency to public defense contractors, to an agency that's really required to set standards, provide oversight, sort of all of those things to ensure competent and effective legal representation for those eligible for a public defender, consistent with state and federal constitutions and national standards of justice. This work also relates to the six-year plan to reduce representation deficiency that the agency has worked on with Moss Adams, who is consulting with us.

One of the key pieces of that plan is funding for core support staff, and the idea behind that – sorry, Mara, if you can move ahead one slide – one of those key interventions there is funding core support staff. And the idea is really that if there are staff supporting attorneys and the work that they're doing, where people have greater expertise for those tasks. So, office support staff, investigators, case managers, if those positions are funded and supported by the agency, that's going to give attorneys doing the work – public defense legal representation – more time to focus on the tasks that truly require a licensed attorney. So, divvying up that work so that attorneys can hopefully spend their time working on cases most effectively. And the idea is that that's going to facilitate quicker and more cost-effective reduction of Oregon's representation deficiency, or at least the hope, and I think there's good evidence to support that. Mara, if you want to go to the next slide.

And so, to be able to really implement that portion of the six-year plan, we started looking last spring at what are these roles? What should the standards be for them? Some of those roles are clearer than others. For example, I think people, at least that have some experience or connection to the public system or legal representation generally, they probably know what an investigator does, but there seems to be less shared understanding in the community about what a case manager does. That's just an example. So, really, that was the starting point for this work is clearly defining what is the work and the type of work that somebody's going to do in that type of role and then setting standards for qualifying to perform in that role, and then performance standards or expectations for each of these roles. And again, this is one piece of the agency's overall effort to develop and implement a comprehensive oversight and quality management plan long term. Next slide.

So, last spring in April, the agency convened six workgroups to assist in defining these core staff roles and then developing the qualification and performance standards for them. Those workgroups were facilitated by our resource counsel, Jordan Huppert, K.O. Berger, Kevin Hupy, Annie Borton, and Christine Breton, who left the agency last summer, unfortunately, and the groups were really made up of both OPDC staff attorneys and non-attorney public defense providers... Sorry, OPDC staff. So our resource counsel, and then attorney and non-attorney public defense providers throughout the system. As we've done

stakeholder engagement work around the development of not just these standards, but the attorney qualification and performance standards that I'll talk about a little bit later more, we've really tried to make sure, or at least do our best to make sure that we're hearing from people working in all the parts of the system. So, whether they're working hourly, they're a state employee, they are in a consortium, they're in a public defender office, really making sure that all of those interests are accounted for just so that we understand and can implement standards and do it in a way that's going to be helpful and supportive long term. I think we're looking a lot at what is happening in other jurisdictions, where there's a move to implement standards, increase oversight, and that sort of thing, and then that causes or exacerbates existing problems. So, we're looking to be really thoughtful and careful about how we do this, and certainly our providers are an incredible resource in thinking through these things, providing input.

We really ask the groups to focus, again, on providing input on what's needed to perform in these various roles and support competent and effective public defense representation, regardless of where somebody may sit within the system or how they may be compensated. And again, the workgroups have provided really great opportunities to collaborate with our providers. Conversations, I think, have really focused on ensuring that people in these staff roles have the knowledge, skills, and training needed to support high-quality public defense representation. Next slide.

Okay. These are all of the roles that were identified, defined, and then qualification standards and performance standards were developed for them. I have not detailed in my slides all the different standards. The entire document is included with your materials. I can talk a little bit about how this document is structured though. Next slide, Mara. And it's really, as we sort of were working through this process of developing, in particular, performance standards, it became clear that some groups sort of focused on some things. There were standards that we really started looking at, that it was clear that it wasn't a performance standard that should be specific to a particular role. It really applied very broadly to anyone working as part of a public defense team, and those really focused on confidentiality, conflicts of interest, unauthorized practice of law, that sort of thing. That's where the document starts, and then it goes section by section through each of the roles, provides definitions for each of these roles, again, and then qualification standards and performance standards specific to the role. Next slide, Myra.

And again, just looking to where we're looking to take this in the future of this set of definitions and standards as part of this larger body of work related to implementing the six-year plan and the legislative directive set out in Senate Bill 337 from the previous long session in 2023. It's going to take time to work

through all of this. We need a thoughtful transition plan to make sure, as I said, we aren't causing or exacerbating problems that may already exist within the system. We don't want to implement, for example, standards that mean, oh, there's almost nobody that can meet these standards, and so now we've lessened the pool of qualified attorneys, for example, for a particular piece of work or body of work type of representation. So, there's that piece.

We're also going to need additional funding to implement oversight and training programs, additional staff within the agency to build these things and to support compliance with these qualification and performance standards. I think ultimately, there's general agreement within the agency that where we want to take all of this is ultimately there will be policies, but also one or more manuals for public defense providers in Oregon. Really the idea, it may be – we haven't talked these kinds of specifics – it may be that there's one dedicated to attorneys, one dedicated to people in staff roles. What it will finally look like, I think, is not totally clear yet, but I think the idea is really to make it as easy as possible for people to know what they need to do to provide public representation, how they work with the agency, and really sort of set out the parameters of individuals' relationship with the agency, sort of regardless of what kind of work they're providing with respect to public representation and where they sit within the system. I'm happy to answer any questions that I can, receive any feedback that you all may have about the document as it stands today.

Chair Jennifer Nash: Thank you, Ms. Flowers. It is very clear from this very comprehensive document that you and your team and the workgroups have put a lot of effort into developing these, and we really, really appreciate it. They're very thorough and very comprehensive. Does anyone have any questions or comments or feedback, input? Commissioner Harris.

Robert Harris: Thank you. Thank you, Ms. Flowers. This is very comprehensive and it is very good, and I like the idea that you had mentioned briefly towards the end of your presentation, put this in a form that's available to all providers because I think it would be extremely helpful to have this in some sort of a form that when a lawyer or a firm or an organization on boards somebody, regardless who that somebody is, they go through this checklist to make sure they've checked these bases and covered these bases. In fact, it got me thinking that when we move on to the attorney qualifications, I'm assuming there will be some for like administrators or trainers or whatever it is, and it should be required to review this information as they onboard people. That should be a minimum standard for lawyers as well, and I'm hoping to see the lawyers' report similar to this in the near future. Thanks.

Chair Jennifer Nash: Other questions, comments, feedback? I don't see any, and I would just say that I think that's probably a testament to just how thorough these are and how well thought out and well worked by all of the staff and particularly the workgroups. And also thank you for the engagement with providers and with each of these stakeholder groups to get their input in developing their own standards, particularly investigators, but staff and case managers, this is very, very helpful. And we look forward to seeing the next piece of this, which is the attorney standards, which are, I'm sure, going to be quite a big chunk of work to bite off.

Shannon Flowers: Chair Nash, I did have a couple more slides I wanted to talk about.

Chair Jennifer Nash: Oh, sure, please.

Shannon Flowers: What's upcoming, where we are with work related to attorney qualification and performance standards. Mara, if you want to pull the slides back up, we can go ahead and go to the next one. So, we did start, and again, it's those resource counsel that I referenced before, I will note we also have a new resource counsel who will be involved in this work going forward. He started last Monday, Colin Reingold. He comes to us from out of state, so I think he's going to be a great contributor too. He's just got different perspective than a lot of us do. He's been involved in reform efforts elsewhere, so we're excited to have him join and be part of this work. But we started these workgroups to focus on attorney qualification and performance standards in November. They're broken out. The four workgroups are focused on criminal representation standards, delinquency, juvenile dependency, and then what we have called quasi-criminal, so that's civil commitment cases, post-conviction relief cases, and habeas cases. I think those are the three primary focuses at this point. These are the major public defense practice areas.

I will say that the focus at this point is really on developing trial-level standards, less so on appellate. I think this is going to be in phases, all of this work, because we want to get moving and start getting some things in place, start building these things for the future, these really essential foundations. But it's going to take time, so we are starting where we think there is the greatest need to start this work, I guess, is the best way to approach it. I will say I agree that these standards that have been developed, both for the staff and what we're working towards for attorneys, the staff ones, they already are very thorough, but I do think that there's probably an iterative process to all of this where we continue. Because as we are doing this work, we are constantly learning more and more about how the system functions when you push on this lever over here, what does it do to somebody sitting over here. Sometimes those unintended consequences, we're learning so they can't be unintended anymore. We want to get out in front of them, making sure we're setting up things in a way that makes sense and is workable long term.

I will say too, both sets of workgroups have just been a really, I think, encouraging opportunity for collaboration with providers. I have not participated directly in the workgroup meetings, but I hear back from the resource counsel about how those are going, where people are focused. I've really appreciated hearing how much people, and people who... I think there are sometimes some heated discussions around things, but people seem to be very focused on quality and how do we ensure that people are able to provide quality representation to those who are eligible for a public defender. So I've just really appreciated the opportunity for the agency to engage, learn from our providers, get their input, and really try to understand how things affect them on the ground, what we can do to be supportive, and those sorts of things. I think that the conversations are focused on standards, but they're broader than that. People, I think, are thinking about, okay, how do you make these things work? We want the standards to be up here. What does that look like? What does it mean? What are the potential impacts of that for folks on the ground? I'm happy to answer any questions about that process, but I also have one more slide that just sort of outlines what our next steps are, so if there aren't questions at this point or you want to save them.

This is what you have coming up over the next few months related to all of this work. We'll be bringing the Core Staff Role Definitions, Qualification Standards and Performance Standards back in February for your next commission meeting as an action item asking you to adopt these, and then a briefing on our attorney qualification standards. That's one of our other goals for the February commission meeting, I think we are on track to do that. The resource counsel have worked really hard to get things... They're working towards finalization of those things. We've got an internal process to work through, but I think we're on track to do that. And then in March, we'll bring those back, the attorney qualification standards, as an action item for potential adoption. In April at your commission meeting, we'll bring before you the attorney performance standards for a briefing on those. And then in May at your commission meeting, we'll bring those back as an action item for potential adoption. That is all I have, finally.

Chair Jennifer Nash: Thank you. Are there questions or concerns or input, feedback? Okay. Ms. Flowers, just for FYI for your timeline, I think what I'm thinking about for the March meeting is that we're not going to have any action items. March is going to be a very short, limited meeting because the legislative presentation that the agency has to give is right before the commission meeting, and so we're going to limit the March meeting to updates regarding the legislative process, and we're not going to be doing big substantive work or doing any action items in March because of just the body of work that needs to be done by the staff in March. So table that for April.

Shannon Flowers: All right. Thank you.

Chair Jennifer Nash: Okay. Thank you. All right. Thank you very much for all of your work on that. It's very, very helpful and very thorough, and we really appreciate it. Judge Lipscomb.

Paul Lipscomb: Yes, this has been very helpful, and I'm very enthusiastic about the way we're going with ensuring that we have standards in place so that we can measure performance. But there is a bit of a downside there, and I think it's one that we should track, and that's when you have new standards, there's also new potential liability for failure to meet those standards, and what kind of coverage do we have? What kind of coverage do the attorneys have through the PLF in terms of meeting these standards? And do we even track this information when our attorneys get sued for malpractice? Do we know what's going on there?

Shannon Flowers: Judge Lipscomb, I'm happy to try to answer that. I think we don't always know whenever an attorney is sued for malpractice or there's a post-conviction relief case. I think there's a lot of data related to implementing these that we need to be able to track. I know you're new to the commission. One of the commission's sort of major projects and the agency's major projects is our Financial/Case Management System, and you're going to hear more about that from our CIO later, but I think as we work to develop and implement that system, that is one of the things that we're looking to is that's our system for collecting a lot of this data. Probably not all of it, but we're looking at those things because technology is going to be essential to being able to know what's happening, have data about it, and be able to report back to you all and to the Legislature and other stakeholders about what we're doing and the impacts of what we're doing.

Chair Jennifer Nash: Also, I had an article that was forwarded to me this week or last week about Idaho and the problems that they're having with attorney qualification. Not qualification, I'm sorry, performance standards, and how once they implemented attorney performance standards, they had a large-scale exodus of criminal defense lawyers, which was interesting. Of course, we don't know why because it's a very overview of the problem, but I think that's something worth considering too. We absolutely need performance standards, no question about it, but I think we need to also be mindful about how we're implementing them and what the standards are. And you've already, I mean, you've done that with the core staff by qualifications, by having lots of provider input, lots of stakeholder input, and I know you're going to do the same thing with attorneys, but I think it was a cautionary tale about the unintended consequences sometimes of doing what we think we should be doing, and we should be doing this, and the impact that it may have. So, all right. Okay. Well, thank you again very much for all of your hard work. We really, really appreciate it.

At this point, we're way early on the agenda. We're slightly early for a break, but I'm going to take the break now because it's just a good time to do that given our next topic. So, I'm going to forecast what my plan is. We'll take a break now. We'll take a break to 11:05 as scheduled. And then I'm going to do the legislative update, the FCMS update, and we'll probably also get to Director Kampfe's report before 12:00. But at 12 o'clock because we have Judge Prall scheduled, Judge Prall will be at 12 o'clock regardless of where we are in the process. And then I imagine the way it's looking is that's probably going to be the last thing on our agenda, and we'll adjourn after that. So, with that, we'll take a break at this point to 11:05.

[No dialogue]

Chair Jennifer Nash: All right. It's 11:05. All right. Welcome back after the break to the Oregon Public Defense Commission meeting. Next item on our agenda is a legislative update with Anna Braun. Braun, Anna Braun. I can't talk today, really.

Jessica Kampfe: Chair Nash, I just got a Teams message from Ms. Braun that her computer just died and is rebooting. So perfect timing. I do see that David Martin is on with us, so maybe we can do the FCMS update first and then pivot to Ms. Braun?

Chair Jennifer Nash: Yes, absolutely. Mr. Martin, so happy to see you.

Jessica Kampfe: Maybe I spoke too soon. We might just have to wait a moment unless you want to hear my director's update, which I could certainly slide in here while we're waiting for Ms. Braun.

Chair Jennifer Nash: Let's do that.

Jessica Kampfe: Okay. Great. Mara, would you pull up my slides, please? All right. This is my director's report, which is just sort of a brief overview of things that are coming to give you a heads up about what's in the pipes. First, I wanted to follow up on questions from our December commission meeting. So, during the December commission meeting, our data team presented on the results from the survey, the retention survey that was done. So, we were funded to and did distribute money to providers as retention incentives, and part of that distribution was that they were required to tell us about how they spent the money and whether or not they felt that the money was helpful to them in retaining attorneys. We presented the results of that survey to the commission last month, and there were a number of questions about it. And so, we just wanted to close the loop with commissioners and answer your questions in terms of what exactly was on the survey. And so, here you have the question that we asked both in 2023 and in 2024. Next slide.

And the commission had questions about who responded to the survey. So, it was contract administrators that completed our survey. The answer came in through Nintex forms, and all of the counties did receive retention incentive funding and were required to fill out the survey. Next slide. Upcoming events. So, our Legislative Subcommittee has set a schedule to meet, and so our first meeting will be on Friday, January 24th from 9:00 a.m. to 10:30, and then that will be a recurring meeting every month on the fourth Friday of the month starting at 9 o'clock in the morning. So, we will look forward to seeing the members of our Legislative Subcommittee a little later this month.

The commission started a series of workgroups, and so these workgroups are really an open forum for commissioners to discuss a variety of topics. The workgroups are going to be held on the second Thursday of each month from 5:00 to 6:30 p.m. Members of the public are welcome to attend as spectators, but because these are really an opportunity for the commissioners to talk to each other, which is something that, given Oregon's public meetings laws, is very difficult to do outside of a public meeting... These are not commission meetings. We don't have a formal public comment process associated with them. It's really just an opportunity for commissioners to take a deeper dive and have conversation that we might not have time for during our regular scheduled commission meeting. Our hope is, as the agency, that this is going to allow the agency to better work with our commission and to be able to really understand the questions that the commission is asking and presentations that are responsive and make sure that we have the right kind of presenters and engagement when we bring subjects in front of you in a formal commission meeting.

The final update is that the accounts payable workgroup is continuing to meet. We've been meeting once a month. That has been valuable, and our next meeting is on Thursday, February 6th, from 10 o'clock to 11 a.m. Next slide, please. I did want to give some information to you all about some things that have happened recently. And so one thing that had happened is that on December 18th, our data and research team facilitated a training for folks on our public-facing dashboards that show the MAC utilization. So these are our criminal caseload dashboards. The training was well attended. It was recorded and is posted on our website and our YouTube channel, and all of the questions that we received during the training have been documented and also posted on our website as part of a FAQ.

Since that training, we have seen quite a bit of traffic to that dashboard. I think we've seen over 400 clicks onto the dashboard, so people are using that dashboard. We need to have a larger conversation with the commission around provider contracts, and so I'm hoping that February will be a good time for us to

have that conversation with the commission. I just want to flag for you that when we're thinking about provider contracts, we're really thinking about sort of four areas where the conversation needs to touch. The first is extensions of existing contracts. Our current contracts are set to expire July 1st. There may be good reasons to extend those existing contracts in order to have as smooth of process as possible in getting new contracts facilitated.

The second bucket is the draft of new standard public defense contracts. And so because we are now in the executive branch, all of our new contracts are required to go through an executive branch procurement process as well as legal sufficiency review with the Department of Justice. The contracts for public defense have been assigned to particular lawyers within the Department of Justice who are doing drafting for us, and we are hoping to complete that part of the process by March of 2025. So we'll be able to update you in more detail about where we're at in that procurement process.

The next piece is the development of the attorney qualification and performance standards. You should have the briefing on the attorney qualification standards piece in February. So, because we are moving to more standardized contracts, we are expecting the qualification and performance expectations would actually be laid out in separate policy documents that are referred to by the contract. So, we have to figure out the drafting with the contract and then we need to finalize those qualification standards so that the contracts can refer to the standards.

And finally, we need to develop the attorney workload standards, and we'll be talking with you all about where we're at in that process in the February commission meeting and how we can have that be an inclusive conversation and bring in a lot of voices so that we are rolling out something that can actually work for providers in the community as well as other criminal justice stakeholders. Because we want to make sure that this transition is one that doesn't destabilize public defense and, in fact, builds us towards a better and more stable long-term public defense system. So, we'll be coming back in February to talk to you all about contracts. This is not going to be a conversation with action items. It's going to be a conversation that is briefing and discussion focused.

Finally, I wanted to celebrate our Trial Division which has been around for a year now, and I'll let you all know some of the work that they have done. The Trial Division wasn't fully staffed until October of 2024. So, even though they opened their doors about a year ago, they have been hiring, recruiting, building out to be where they're at right now. And so we are now fully staffed. During their first year, they provided representation on 1,123 cases. The mission of the Trial Division has been to take in-custody unrepresented cases. So, while not all

1,123 cases are in-custody unrepresented, the vast majority of them are. So, this has been really an effective tool in providing representation to some of the most vulnerable people in our community, those who are incarcerated without a lawyer.

Of the 1,100 cases that they took appointment on, they've resolved 443 cases. We are able to look at outcomes for our Trial Division. We have pretty good data on Trial Division cases. And so what we can see in terms of outcomes is that 16% of the cases, 16.6% of the cases, Trial Division provided representation on were dismissed, 19.4% resulted in probation, and 2.9% resulted in sentences of discharge, which means there was a conviction but there was no probation or jail associated with that conviction. That means that over 40% of the cases that Trial Division has been appointed on, where a person was in custody to start off with, has resulted in them being back in the community and no longer incarcerated, which is really exciting news for us to share with you about an important impact that we're making on that in-custody unrepresented population. And I believe that concludes my director's report.

Chair Jennifer Nash: Thank you. Are there any questions about the information that Director Kampfe presented? Okay. With that, then we will turn to Ms. Braun if she's available to give us her legislative update. Ms. Braun, we can't hear you if you're talking, I don't know if you're muted or not.

Anna Braun: [Laughter] Sorry,

Chair Jennifer Nash: Oh, there you are.

Anna Braun: Thank you, Chair Nash, Vice Chair Mandiberg, Director Kampfe, commission members. I am Anna Braun, I'm the temporary government relations manager for the OPDC. By next meeting, you'll have Lisa Taylor back and she's on maternity leave right now, so I just wanted to give you a brief update on the legislative items. I don't have a PowerPoint. I did send some materials to the commission, and I think you have the short memo I had, which was the E-Board items that were approved, the list of the committees, and the changes that happened for this session. And most important there, I think the commission should know that Senator Sollman is no longer the Public Safety Sub-Chair and that is Senator Broadman now. And Vice Chair Representative Chotzen is now in the House Judiciary Committee with Chair Kropf.

So, we have updated room numbers from the time I gave you the memo. So, I just wanted to make sure that the important things for this commission are the Public Safety Sub, which is Monday through Thursday at eight o'clock, and that now is HR 174. And the House and Senate Judiciary Committees are unfortunately meeting at the same time, which is at 3 p.m., and they'll be in

different rooms, and that's Monday through Thursday. The House Judiciary will be in Hearing Room E and the Senate Judiciary will be in Hearing Room F. I included the legislative calendar in your material, so I hope you saw that. The big deal is the session starts on Tuesday. The big deadlines are April 9th is the first chamber deadline. So, if the bills aren't worked by then, then they're dead. The second chamber deadline isn't till May 23rd and target sine is June 18th and constitutional sine die is June 29th.

The bills were released last Friday, so we have 2,284 bills, which I took a look at over the weekend and culled them down to 310 bills, and you received the list by email and then I think we'll be posting those after the commission meeting on the website materials. Most of them, I have to say, are placeholders. A lot of those. There's eight placeholders we're particularly interested in which is related to public defense. And there's a budget bill, of course, it's House Bill 5031. We're interested in that one. And our placeholder is House Bill 2810. And so that's just a quick overview. As Director Kampfe said, we're doing a subcommittee on legislative. The Legislative Subcommittee's meeting on January 24th. Thank you.

Chair Jennifer Nash: Are there any questions? I have a question, and I already know the answer, but I'm going to ask it anyway. Is there any way to discern – crystal ball, magic wand, anything – from the list of the 310 potential bills that you gave us related to public safety, which ones have potential legs just by looking at the list? No.

Anna Braun: So, I'll tell you how to find the placeholders, and my next list will tell you which are the placeholders, which are the ones that are committee bills. They look like a little paragraph, and they say "related to courts" or something broad like that. So, those, I don't want anyone spending any time on because we don't know what's going to be in those. So, there's like 80 of those. The other way I'd know kind of what's going to happen with a crystal ball is how many sponsors does the bill have?

Chair Jennifer Nash: Yeah. That's what I thought.

Anna Braun: And if you have a lot...

Chair Jennifer Nash: I was like the more sponsors you have, the more likely it is something's going to happen. Okay.

Anna Braun: Yes, I would say so. So, committee bills right now tend to be placeholders. Individual bills aren't, and the ones that have lots of sponsors probably have legs. They'll at least get a hearing for sure.

Chair Jennifer Nash: Okay. Thank you. Are there any other questions for Ms. Braun? Wow, thanks for the list. It took me a really long time to go through that.

Anna Braun: Oh, you read them?

Chair Jennifer Nash: And I read every one of them, but not as many as you did. Did you read 2100 bills or some really...

[Crosstalk 02:21:03]

Anna Braun: 2284. But if I did miss some, I went through quickly of course, and if I did miss something, if anyone sees something that's not on the list that should be on the list, please let me know and I'll add it.

Chair Jennifer Nash: We will. Thank you very much. Thank you for your very hard work.

Anna Braun: Thank you.

Chair Jennifer Nash: Very, very thank you for your work. All right. Mr. Martin, are you available for the FCMS report?

David Martin: I am.

Chair Jennifer Nash: It's so nice to see you.

David Martin: Thanks.

Chair Jennifer Nash: Welcome to the January commission meeting.

David Martin: It's great to see you, Commissioner Nash, everyone. It's been a little while. It's been a hot minute since I've been in front of you. I am still trying to get up to speed on FCMS, so a little bit of grace as I present today. Don't ask me too many hardball questions or ask them and I will readily take notes and then get back to you offline after the fact. So, anyway, let's jump into the slides here. Mara, next slide. Actually, I think, yeah, and then the next one, Accomplishments, and ignore that November 2024 in the upper left-hand corner. We will address that next slide or next report. This is January 2025 for the record.

Just to editorialize really quickly, this is a very fast-moving project. In fact, actually, let me back up and say, let me thank Mary Knoblock and Tracy Edwards and Jen Sullivan and Tracy Colbert for really holding things down while I've been out for the last almost two months. So, I love the fact that FCMS has continued to move forward in my absence, but this project represents just a huge body of work.

We have on that first item, addendum three, we have proposals in hand. We have received them. Our evaluation committee is going to begin reviewing all of those proposals, I believe, beginning next week, but this last Friday, we got that done. The second item, addendum four, I just want to call out again, the body of work is really represented in the people doing the work, and the fact that we had people, our procurement officer, Jana Hart, working really, really long hours and my whole project team through holidays to meet these deadlines really, I think, speaks to the quality and the dedication of this team. So, we got those accomplished. Moss Adams, if you recall, they are our organizational change management vendor, and they distributed a report of this just a couple of days ago on Monday. We are coming back, I believe, next Thursday as an executive steering committee. That's what ESC stands for, executive steering committee. Thursday, we will be coming back together to review that report a second time and vote on what needs to be voted on. Next slide.

So, next steps, as I alluded to, we've completed the receiving of the proposals, so now we are going to be looking at reviewing those proposals. We are looking at January through February. The dates, just in general, I think we should qualify the dates that you're seeing right now as they call them nominal. In other words, we're still looking to really lock down the accuracy of some of these dates. So, when you see February 19th, I don't know how truly accurate the 19th specifically that is, but I think it is fair to say mid-January to mid-February, we are going to be reviewing Round 1 proposals. Moss Adams, with their change management report as they reported on Monday, that's really just the beginning of a conversation around their findings and what do we do with those findings. So, it's the beginning of a road that we need to walk. So, expect more presentations on what comes from that report in reports in the future.

That last one, Casework Benefits Management Plan and Stage Gate 3 artifacts, in regards to the Benefits Management Plan, we held an open house a few months ago and we heard, we listened, there were questions around what are the benefits of FCMS. We are working on a body of documentation to really speak to that, and that body of work is going to be built out from engaging all of our customers, stakeholders, not all of them, but a representation of those. So, we are going to be working with our constituents to really articulate what are the benefits of FCMS. And then Stage 3, we are in the final stage of this project from a state of Oregon standpoint. I'm sorry if I repeat myself a little bit, but I get only in front of you every month, but Stage Gate is the governance piece of the state of Oregon. They are kind of that third party where they're checking over our shoulder, they're reading our homework, they're validating that the dates are reasonable, the resources are accurate, that we are doing this project to project standards. And so when we create a project like FCMS, we present to the Stage Gate folks that body of documentation. And so I believe right now we

have over a dozen project artifacts currently in flight that will be submitted to that body of project governance folks by March of this year. Next slide.

We continue to build out strong governance for risk management. I'm bringing in this slide the two main risks that we're tracking, but I believe there's a document with other risks that we're tracking, but these are the ones that are probably worth bringing to this group today. We are now in the executive branch, and we are beholden to kind of a different set of rules than we were under the judicial branch. Jana Hart, our procurement officer, is already working with DAS and the right bodies within state of Oregon to make sure that from a procurement standpoint, that there aren't any impacts to us now being in the executive branch. I will point out though that since we've been in the judicial branch of government, we have already been acting like we were in the executive branch. So we've already been partnering with the right entities within state of Oregon since really the inception of this project, but really we need to get some clarity around what the expectations are from the Department of Administrative Services as it pertains to procurements through the lifecycle of this project.

The second risk I wanted to bring up is we still do not have a change management lead for this project. The good news is the vast majority of communication really is around procurement. In fact, you'll probably hear me say the word procurement a number of times this morning in this presentation. I apologize, but really this is kind of the topic of the day for where we are in this project. From the standpoint of procurement, the interim communication lead will be Jana Hart, our procurement officer. So, as we are moving through the lifecycle of this project, that person may change. I got to hear from Ms. Braun just a moment ago that Lisa may be coming back, but we will be looking for someone on staff ideally that will be in the role of communicating out around FCMS. Next slide,, please.

Critical path. Again, we do work, we are continuing to work, on bringing in accuracy on dates, and I caution all of you to not read these dates as written in stone. I am going to commit to you folks that on the next presentation, we will bring within 10% accuracy on dates as we get better data to really fill out what we are looking at from a date standpoint. But really, what we're looking at on this slide is we're now in the evaluation process, evaluation Round 1, Round 2. As I mentioned at the top of the hour, we are very committed with a very dedicated staff, so we are going to be as aggressive as we can with meeting timeframes and timelines. But there is some question around... There is not a question on this slide. Notice to intent in the protest period, I think those are pretty well established. I think the concerns that I am going to have that I'll be transparent with you folks today is going to be more around issuing the contract

and the timeframe that it's going to take to actually complete the contracting side of things. More to come on that. Next slide though.

So, as I was talking about just a minute ago, I think I'm going to be asking a presentation in the next month of two different timelines. This timeline really articulates the process of us getting to the end of awarding to a vendor. What I also want to start presenting to you folks is really what is the life cycle of the entire project. Once we award the contract to the vendor, what is a reasonable expectation for getting that software installed, getting it vetted, getting it tested, getting it implemented and out to the folks here. We're not really articulating that in these slides right now, and so that'll be a change that you can expect in future presentations. But what you can see here on this slide is the stuff in green, I have high confidence around in terms of timeframes. I have reasonable confidence around the evaluation of proposals in Round 1 and Round 2. I think I'm going to be asking for more clarity within my team around the negotiations of contract. Again, more to come on that, but I want to provide realistic expectations to this commission around what it'll take for us to get across the finish line. Next slide.

The project largely is in medium risk. We have critical path items around procurement. Again, procurement's the topic of the day. As I mentioned, we are working with the executive branch side of the government now, and so we're trying to understand what are the nuances, if any changes around procurement. And again, to repeat myself, we have been for the life cycle of this project already been working and partnering with the executive side of the house. So, I'm hoping that this is just something that we need to call out and recognize, but really it should just be business as usual. From a budget status standpoint, bond funding until it's approved, I think this needs to stay yellow. I still have high confidence that funding will be approved, but until it is, it stays yellow.

From a scheduling standpoint, I want to pull out the word multiple. We have multiple resources and multiple tracks. I realize that the item below is around resources, but schedule and resources are really closely intertwined, and so there is a lot of overlap around the same people doing different tracks of work. And so one of the things that we are working hard to do is to be effective and efficient with the staffing and resources we have on this project, so we are keeping an eye on that. From a resourcing standpoint, the pinch point is around our business analysts. We do have a POP 101 out there that may or may not be relevant to this topic as we move through the project, but we are keeping an eye on our business analysts' capacity right now where we are in this project.

And the scope for Stage Gate 2, that's the one green. It's nice to have green on a slide, but I think the reality is we need to remove that. We'll move to a Stage Gate 3 line item for status in future presentations. And again, we will be working

on refining the scope of the schedule and this project to a 10% of accuracy, and I think we are getting better at being able to do that now where we are in the project, where we have better data so we can make more clear estimations on the schedule of this whole project. Next slide. Oh. There we are. [Laughter] So thank you. I had another item I wanted to bring up before I released my time, but are there questions that I can write down and follow up as it pertains to FCMS?

Chair Jennifer Nash: It doesn't look like it.

David Martin: Okay. I wanted to talk briefly around Nintex and provider payments. It has come to me through the water cooler that there may be a little bit of concern around, as we enter into the executive branch, as we leave the OJD IT support model, do people still get paid? And that's a very reasonable question to ask. I have not used this place to talk about the IT transition, this has really been focused around FCMS, but I'll talk briefly around the transition right now. And so to that point, I believe it was in September that we already had left or began to leave the OJD network from a physical networking standpoint. Like leaving the house and moving into a new house, right? That was in September. And as of the time of talking with you today, all of our servers are already in the state data center, all of our data is in the state data center. For all intents and purposes, we have already left OJD.

We have a formalized meeting with OJD next Thursday to receive essentially the keys to the house. To use that analogy, it's like we have moved the furniture in, we've put art on the wall, we've put the dishes in the kitchen, but we don't have the keys to the front door. And so we get the keys to the front door on Thursday of next week. That's not to say that all of the work is done. It's just that almost all of the work is done. As it pertains to Nintex, there is some backend infrastructure that we're looking to address and tweak, but the good news is we have between now and June 30 to accomplish that. I can send the strength of my team to focus on really just one small item, and I want to point out that right now Nintex works and people are being paid right now. So I do not anticipate any changes to provider payments. If it's working today, it'll work tomorrow, it'll work July 1. Any thoughts or questions from Chair Nash or the commission?

Chair Jennifer Nash: Well, that's very helpful. I have to say that the water cooler was me [Laughter] because I got a number of questions after the last commission meeting. Which by the way, the presentation at the last commission meeting for your team member who filled in for you was wonderful.

David Martin: Awesome.

Chair Jennifer Nash: But she answered a question about the timeline for transition being about 18 months, and many of us thought, okay, what are we going to do between July 1st, 2025, and a year from then?

David Martin: Right.

Chair Jennifer Nash: So, thank you for talking about that. I'm sure providers had that same question about what that was going to look like, if we were going to have just a black hole, are we going to try to reinvent a whole new system or what. So thank you. That's very, very helpful information.

David Martin: Of course.

Chair Jennifer Nash: Does anyone else have any questions about anything that Mr. Martin's talked about? Okay. Well, I just want to say one other thing, Mr. Martin, and that is that we can't anticipate being unexpectedly gone, and I know there was a lot of concern by outside partners and us to some extent that with your absence, given what a strong lead you've taken and hit the ground running on this FCMS project, that it may have caused a significant issue. And I was confident because your team has been so strong that that would not happen, and I am very happy to say it didn't, and that is really a testament to you and to your entire team. One of you left and the rest were able to step in and do the work and that's wonderful and we appreciate it so much. There've been so many delays in this project, and you are all very committed to continuing to do this work on time, and we really, really appreciate it, and we're very happy to see you back.

David Martin: Thank you. Thank you for the kind words, Chair Nash.

Chair Jennifer Nash: All right. Now, our next item on the agenda is Judge Prall but she is not scheduled until 12:00. I don't know if we can get her if we're able to reach out.

Jessica Kampfe: Chair Nash, Mara has been in communication with Crystal with OJD to see if Judge Prall could come earlier. We have not heard back. I know Judge Prall does a lot of courtroom work, and so she may very well be on the bench right now. So, I don't know that we will be able to reach her early.

Chair Jennifer Nash: I wasn't sure that that could happen. We can have discussion, but only about things that are related to other agenda items because of the public notice issue. So, unless there are things that commissioners are really wanting to talk about, we're going to need to take a break until noon to come back to hear from Judge Prall, and then she'll be the last person on the agenda. Is there any... Oh, Commissioner Harris?

Robert Harris: Yes, sorry, and I was going to actually ask this under the unrepresented crisis presentation, but it sort of got beyond that and I wasn't going to delay the meeting over this. But since we do have a few minutes, I was looking at the dashboard. Great dashboards, by the way. I really enjoy going through those, sorting out the data there. But I'm looking at what I would consider sort of the five, well, maybe six crisis county – Marion, Douglas, Washington, Multnomah, Jackson, and Coos County, which doesn't have as many, but it's got a high percentage of cases that are unrepresented down there as well. And I'm looking at the net utilization rate of the different providers there. There's a big variety.

If you look at Marion, for instance, they have a 70% net utilization rate, yet they're probably one of the highest crisis counties. So I'm glad that we'll hear from Judge Prall on that. But then if you drill down a little deeper, Multnomah has this issue, Jackson County has this issue. You'll see one provider or two providers that are substantially below the others in net utilization. I'm assuming this is adjusted utilization rate, so it takes into account the actual number of seats filled by lawyers. And there's reasons for that happening, I'm sure. But has the agency had meetings with these providers to try and see what it can do to get these provider utilization rates up, whether it's resources or just talking to them, is the agency setting any minimum case standards for these providers?

Because here's my concern. If you had a school that was underutilized, and 30 students are maximum number of students each teacher should have, but that district happened to have 35 students per classroom, you don't refuse to teach 5 students. And while I know that 30 would be the preferable number, well, 20's probably the preferable number. At some point, we try and give something to everybody here, and there's two things that...quantity and quality. Right? I mean, it'd be nice to have every caseload down to 120 work units or whatever you want to call it, or different set, open cases, whatever it is, but we don't, and we can't get there overnight. How do you thread that needle, balancing quantity and quality? And I'm not saying you haven't done it. I don't know if you've done it or not. But how do we balance that between getting everybody an attorney? There's also an equity issue, by the way, within these counties. If one provider's taking 80%, and the other's at 60%. What's the equity between the clients themselves? And these are all issues that go in there, but I'd like to hear how the agency... I'm sure you're aware of this stuff because you have the data. So, how are you addressing that, or are you addressing that, or are you letting each provider sort of set their own standard?

Jessica Kampfe: Thank you for the question. This may be an area where we want to build out a more robust presentation, so I'm not giving you answers off the cuff to these really important questions. And I know Shannon Flower, I can see she's still with us, she might be able to help on some portions of it. I'm going to just take Jackson County as an example. Jackson is a county where traditionally we've

had incredibly high MAC utilization, so providers right around 100% historically. In Jackson County, we saw a fair amount of turnover happen within the provider community.

One example of that turnover is that two defense attorneys became judges, and that happened pretty quickly. Like basically, at the same time, they both went to the bench. When they went to the bench, they had a caseload, and they weren't going to be able to take that caseload with them because they were changing professions. What they did was first they went off of pick up, right? They stopped taking new cases so that they could work down their existing caseload. Now, they're still counted as MAC under that contract during that period of time that they are no longer taking cases, and so for that period of time, they're counted as a full MAC, but they're not receiving any new appointments under the contract. And then whatever cases they aren't able to take with them, they then distributed among their colleagues, which increased the case pick up for those colleagues, and they weren't able to take new cases.

So, to your first question, is the MAC utilization number reflective of actual people that are in the contracts? Yes, it is. It absolutely is. So, when somebody leaves a contract, the numbers, it's prorated to reflect the start date and the termination date. But what it doesn't necessarily reflect is that wind-down period, and that is part of what you're seeing in those Jackson County numbers, particularly in the couple providers that are lower than other providers, is that they experience that wind-down period. So, hopefully that answers the first question. The second question is, yes, we have been leaning in on providers where they are below a threshold of utilization, and that's work that our program analysts do. Shannon Flowers is the supervisor of that unit, and so she might be able to speak to some of the work that our program analysts are doing with those providers.

Shannon Flowers:

Thank you, Director Kampfe, Chair Nash, Vice Chair Mandiberg, Commissioner Harris, and the remaining commissioners. I think the program analysts have – and there's three of them that manage all the contracts in the state and are doing procurement work related to that, which we're working on transitioning to an emerging procurement team here at the agency – but they have over, I would say, the last six months or so really tried to focus some of their efforts in a really meaningful way on looking at utilization month to month and for the contract period for the jurisdictions and contracts that they're responsible for and working with contract administrators throughout the state to make adjustments.

So, one of the things that has been an easier fix or way to address sort of utilization issues is where we contracted at a level that maybe hasn't proven to be needed in the way that we did, and so I think commissioners know that our

budget for the last few years has been broken up into many more buckets. And so we have a bucket for our criminal contracts. We have a bucket for our juvenile contracts. We have a bucket for our PCRCP contracts. And so where there are contractors who have both a criminal and a juvenile or PCRCP contract, and I think this is true particularly in more rural parts of Oregon, eastern Oregon, southern Oregon, looking at the utilization on sort of both sides and what case filings and pick up look like, and making adjustments to contracts where we can. There are some sort of budget limitations about what we can do when, just as far as funding being available, which direction we're trying to shift FTE. But that's one thing that I think has been a very sort of gentle and appropriate way to address some of this is just right sizing our contracts to be hopefully more in line with the need in any particular jurisdiction.

They're also looking and working with providers and courts around pick-up schedules for both criminal and juvenile cases and trying to make sure that if one particular attorney or provider contractor is low, are there adjustments that need to be made to pick-up-and-rotation schedules? Do we need to have those attorneys in courtrooms more able to pick up cases? Looking at making those kinds of adjustments where we can because there's such a need throughout the state. We don't want to cut contracts, certainly, where we can avoid doing that. So, I think we're trying to use a lot of different tools that we may have at our disposal and identifying those as they develop. And again, managing that transition of attorneys going from work under a contract to hourly work and what that may look like, but trying to manage it in a way that is going to be most supportive of the attorney, the jurisdiction, their clients, and least disruptive, I think is the sort of big thing. We have a lot of transitions happening, I think, throughout the state. So, trying again to be really thoughtful about how we help in those.

Chair Jennifer Nash: Kind of as a follow-up – thank you for that information – we had a question posed to us in meetings by various different partners in the public safety realm about what the agency is actually doing to determine why MAC utilization is low by certain providers in certain counties. So, can you speak to whether or not the agency is directly reaching out to those providers and asking why is your MAC utilization low, where that information then goes so that the data can be captured, and what's kind of the threshold for that? What's the trigger point where you say, "Oh, I need to call this administrator or this public defender and ask why"? Can you talk about those things?

Shannon Flowers: I think our threshold – thank you for the question, Chair Nash – I think our threshold has been that 85% mark. We've worked with the data and research team really closely. In one of our many dashboards that they've developed to help us manage all of this stuff, they actually set up a page that will flag who are the contractors under that 85% threshold. So, 85% of their contracted FTE and

associated MAC, who is below that 85% mark. Our program analysts are monitoring that.

Sorry, to back up a little bit. That's a somewhat more recent development. Having just a dedicated page that tells us who do we need to talk to is a simple thing, but pretty significant in what it helps us being able to do day to day and month to month. I mean, when we identify there's an issue... And one month may be an anomaly too, right? Depending on the particular circumstances, it may warrant a conversation. Not always. We're really looking at trends overall. Where does it seem like there is a problem or our contracts aren't really aligned with the need and those sorts of things. And sometimes it is people saying, "I just don't have the capacity to do more than I'm doing right now." And in which case, I think sometimes the conversation is, is hourly work a better fit for you at this point? We want to keep as many people doing the work in the system as possible and find a relationship with the agency and with the system that is going to be workable for the attorney long term.

We have over the last few years, I mean, it's happened on a number of occasions where people just get to a point that they... When we find out that there's trouble, that they're having some problems with managing their workload, we don't find out about it until they're like, "I can't do it anymore," and then we're looking at reassigning a bunch of cases potentially for somebody because they're just saying, "I have to get out of the system entirely." We're working really hard to avoid that and trying to work with attorneys and contract administrators and contractors that support good practice and keep people working, but in a way that is manageable for them.

Chair Jennifer Nash: Okay, so thank you. Also, you didn't address when you make those calls and you get that feedback, where does that information go, so that we can, and members of the public can be informed about what's happening with a particular provider?

Shannon Flowers: I don't know that we are doing anything to communicate it back out publicly or to the commission directly. I mean, typically the analysts and I as their supervisor are working to address whatever the issue is and try to avoid a problem or resolve a problem that may have developed. We can certainly raise those things up and communicate. When we start to see something that looks like this isn't something that we can fix, or at least not particularly easily, it looks like it's maybe emerging into a more significant or longer-term problem, we certainly try to alert Executive Director Kampfe and other members of the executive team.

Chair Jennifer Nash: So, let me put a finer point on this. We're going into session. There are a lot of questions about MAC utilization. There are a lot of questions from legislators.

There are questions from members of the public. And I've been in meetings where those questions have been asked, and the agency has been unable to answer them. And so what I want to be assured of is that when there is, we've got the dashboard now, anybody on any given day can look when there's someone who's below 85%.

What I want is for the governmental relations manager and Director Kampfe to have the answer to that question in every meeting she goes into. Why is this person less than that? I want her to be able to rattle off, "Well, we've made contact with this person. Here's what's going on with that provider." I want her to know all of that information in real time so that she can answer those questions. They come up every meeting she has, I would say. Director Kampfe can correct me if I'm wrong, but I think it's almost every meeting. And we certainly see some media presence around this issue recently as well, and we really need to be able to answer those questions. If we have the information, and it sounds like we do, we need to be able to provide the information to anyone who asks. Commissioner Harris, and we have just a couple more minutes before we have to stop but go ahead.

Robert Harris:

I appreciate that. I see Judge Prall is here as well. So, I just want to make three comments. Thank you, Director Kampfe. I agree that when you have people leaving an organization, they have to pick those cases up, and I could see why people would leave to go to the bench or some other job such as that. But turnover is a quality issue for providers, and I would like to see some sort of a reason for high turnover if there is high turnover. I mean, if it's going to the bench, that's understandable. But we talked about exit interviews and getting information on exit interviews because when you do hire subcontractors or organizations, you want to know they have quality. If they come, "Well, I can't do my contract because I got high turnover." Okay, well, why do you have high turnover, right? So, I think that's information that I think the commission needs to know, honestly. Have you asked whether or not the providers who have lower MAC utilization are utilizing specific written or adopted caseload standards internally? I think that's a good question to ask because I think that if someone says, "Yes, the reason we're under is because these are our caseload standards, and we're sticking to them because we believe this is what we should be following," that's fine. We need to know that.

The other thing is, I totally agree with Chair Nash on this. Because all we see at this point, or all many people see – we see more, we see the work that's going on – but many people, all they see is this agency failing in its mission to get people lawyers, and we have to have an explanation. If you want to change that dashboard to say, "If someone leaves for another job, we're going to give half MAC credit, we're going to give them additional half MAC credit." At least for dashboard purposes, people can see it goes from 70 to 78%, or whatever it is, if

they have to reassign a case to another lawyer. There's probably ways to deal with that or explain that, I'm not saying that's the best way to do it, but there are ways to do this. And so we can have these explanations, instead of doing, "Well, in this county and this county," you could say, "Well, we've dug into this, this is what we've got," because people want answers. And when all we give them is we have a growing, unrepresented population, that's not a very good data point to start off with. Thanks.

Chair Jennifer Nash: Yeah. One more thing then I'm going to stop talking because Judge Prall's here. We need to have like a, "Here are the reasons for this." I mean, when I get asked this question, I start going on about data and this and that, and I'll tell you what comes back is, "I don't want to know that. I want to know why this isn't getting any better. Why are these people not taking as many cases as we think that they should be taking?" They don't want me to talk about math versus workload, although I do think that's a huge part of the answer. They want to know what, distill it down to what is the problem. And if we cannot communicate that, and we have not been successful in communicating that in a clear way, it is only going to continue to plague us. So, we've got to be able to provide that information in a way that's clear and understandable. All right. And with that, and I'm sure Judge Prall's going to tell us that too, [Laughter] I'll turn it over to Judge Prall from Marion County. Thank you for taking the time to meet with us this morning, or this afternoon now.

Judge Tracy Prall: Thank you, Chair Nash, and actually, I wish I had joined a little earlier to hear the full discussion about the MAC. That is something that plagues us here. Just a brief background. My name is Tracy Prall. I've been the presiding judge of Marion County since 2017. Marion County is known for its culture of collaboration and camaraderie really between every practice area, but especially our criminal bar. And when the pandemic hit in 2020, we really leaned on those relationships and that culture, and we were able to come together – public defense, the DAs, the commander at the jail – to keep our cases going. So, we just never really stopped. We were doing jury trials. We were doing settlement conferences. We were doing lots of interesting things for our out-of-custody folks.

But in doing that, I think public defense was taking a hit already in our community because of the pandemic. People were leaving, but we kept going. And so that then created what I personally came to realize in July of '21, a public defense crisis. That's the first we learned of it. I felt like Chicken Little running around saying, "I think the sky is falling." Started meeting with OPDS at the time in November of 2021, it was the first time we were meeting, and then started weekly meetings as our capacity for our public defense attorneys was going down.

So, fast-forward to July of '23, when we did the crisis plan, and we brought everybody together. I think we worked really well to develop that plan. Frankly, we got some great resources out of that. I had been personally trying to gather attorney capacity or attorney caseload data from Odyssey, just straight looking up an attorney and counting one by one by hand, how many cases they had and trying to determine their availability. So, through the crisis plan, we did get funding. First, additional funding, I think, for our dashboard that we were trying to develop with this information and then funding for a full-time analyst in our court. So, that analyst since really last January has been working diligently to use the dashboards, identify attorneys that are available in contract and out of contract to assist us.

So, that was really a game changer for us, and I think we've been able to manage completely our in-custody list. So, we never have anyone in custody without a lawyer. The only reason you'll ever see somebody on the dashboard that's in custody is because we do the appoint OPDC one day, and the next day we appoint the lawyer. We really are only doing that towards the end of the month when attorney capacity is waning, or we do it on J. Law cases and murders. The other thing we got out of that crisis plan was additional funding for OPDC. So, analysts, I think we were able to get analysts, and you have the Nintex form, they created that process. So, we have great communication with OPDC about the need for murder J. Law cases, and then at the end of the month when we're really feeling the pinch because of the 25 MAC limit.

What I would like to just say with regards to the MAC is the data does show that we have... We have two groups in Marion. We have a public defender's office. We have a consortium. Our public defender's office, I can see today is down to about 63% utilization. Our consortium is at about 83. Our public defenders, anecdotally, I would say it is about turnover. Our public defender's office currently has 22 members, I believe. They've lost 16 since the dashboard was put up. So, that's 16 out and then funneling through. Those 16 lawyers that left, left caseloads mostly. We had 5 of them go to the OPDC Trial Division, and we didn't let them off their cases, so they kept them. So, if you see OPDC Trial Division lawyers having Marion County cases, most of those are cases they had as PDMC lawyers, and we didn't let them off. So, I think it looks like Marion gets a lot of work out of the Trial Division, but really it was just rearranging the chairs on the deck of the Titanic. So, we were struggling to take advantage of the Trial Division that is now here in Salem upstairs from our public defender's office because those lawyers, what I was told from OPDC, those lawyers were really being reserved for in-custody cases. And we just didn't have any. We didn't let people be in custody without a lawyer, not even for more than 24 hours. And really it wasn't even that, we identified the lawyer at arraignment.

And so what happened more recently is we agreed to have the updated crisis plan meeting with OPDC in December. All of the partners gathered again and that was actually very helpful, and I would encourage other counties to have that meeting. I would say that they took a knock on the chin when we said, "These are the things that we were hoping that you would do, and they haven't been done," but then very quickly they offered things to us.

So, one thing that we're building is a diversion docket for our Spanish speakers. We've really struggled with lawyers that speak Spanish to take those cases. So, the Spanish-speaking diversion cases they're going to take. I'm really not sure why Marion is the only one who has a whole lot of probation violations on the list of out-of-custodies, but we do. They've agreed to take most of those because those would be very kind of quick in-and-out cases. So, I think they've taken maybe 40 already of those cases from our list, so that is helping and will impact us. So, we really do appreciate that. But it is those kind of mass dockets that there's low-hanging fruit, really, that we're hoping to get their assistance with, and I think they're willing to do that even though they're not in custody. So, that has helped us, frankly, whittle our list. I'm looking at it right now. We're down to 567 cases. So, there's probably a few less if you're looking at defendants, which is way better than it was in November, which we were over 800 and teetering on 900. So, I think something is happening right now utilizing more of the attorneys.

So, the public defender's underutilization, their office, I think, has a lot to do with the turnover. So, then they have newer lawyers who are not, frankly, I wouldn't expect them to take a full MAC. When you do that, there should be some mechanism to recognize different levels of lawyers so that we're not making it look like they should be taking 25 a month when really maybe they should only be taking 15. So, it looks like they're underutilizing when really they probably are utilizing to their potential. The MCAD lawyers or consortium lawyers, what we were finding is that it's a little bit of a game of telephone because the lawyer has to report to MCAD, and then MCAD reports to OPDC the caseload. OPDC's numbers then are way different than what I can see in Odyssey because the lawyer didn't report to MCAD, then they couldn't report to OPDC. So, OPDC thinks the lawyer has 100 open cases when I can actually see, no, no, they have 125 or 150. So, the lawyer is just slow to report.

I think when we said that in early or mid-December to them, many of them kind of focused in on reporting. So, now I can see they're now up to 83% utilization. I think it's actually higher than that when I can look at the numbers, but they too have lost lawyers. They've lost 9 since the start of this contract period. So, over the last year and a half, they lost 9. One was to our juvenile consortium, and one was to a judge position. But when they were talking about where these people are going, it is difficult to know where the 16 from PDMC went to and

where all those 9 spread out. A lot of ours go to Portland, frankly, to the public defender in Multnomah County, I do know, but I'm not sure where the rest go. But somehow tracking that, that was a problem with OJD dashboard that we didn't have when do they start? When do they end? When do they go on maternity or paternity leave? When do they come back? What sick leave? So, the numbers, I know the utilization numbers are a little bit wonky because there's nothing that is tracking that. I think OPDC and OJD are now trying to share that information, but there's barriers to that too.

So, I don't know if there's specific questions that you all might have, but I do want to say that the THIP rate, the T-H-I-P rate, has really helped us in recruiting non-contract lawyers to help us out. We have some that are very steady for us when we get like an A felony that has been on the list. I see that there's a report that we have one that's on there for 400 days. I don't know where that case is. I think the oldest I knew of was a 260-day old case. And so we do have our priority from the crisis plan. We first appoint to anything that's DV, misdemeanor, or felony. Then we go down to person crimes. Then we go down to DUIs. Then we get down to weapons charges. So, we go by our crisis plan for the priority. But then the last one is our analysts will come to me when we've got a case that is reaching the 300-day mark, and we get that person a lawyer. So, we try to plug that in, but we're not giving those to contract attorneys, we're giving them to the phone-a-friend and trying to get lawyers in our community to do those cases. So, we've been pretty successful at that, but again, we're still at 567. So, do you have any questions? Or I can keep rambling. [Laughter]

Chair Jennifer Nash: Does anybody have any questions so far? Doesn't sound like it, so you could keep... Oh. Commissioner Buckley, did you have a question?

Peter Buckley: Yes. Thank you. Your Honor, thank you for giving us this information. We heard from the Lane County folks last month and they talked about how they've been able to reduce unrepresented cases through a really specific scheduling process where there's a predetermined schedule. Public defenders can depend that 30 days after they get the case, there'll be a hearing, etc. Do you have any thoughts on that? Is that something that your court could move towards?

Judge Tracy Prall: Right. So, Marion County is different than Lane because we have individual dockets, and so once a case... Our cases all start at our criminal court annex. They're never there for more than 60 days. They then get assigned to a judge downtown for trial. Marion County has a, basically, if you get a trial date, that is your trial date. So, all of the judges try to set trials within the time to disposition standards. So, on a misdemeanor, if it's a standalone misdemeanor, they try to do those within 180 days. If it's a felony-level case, they can do that within a year. So, those are the time standards they stick to. And like in Lane, they have a

master calendar docket. So, they have that ability internally. Each judge is supposed to comply with those standards.

We do have special dockets. We're actually going to have a special DUI docket where three judges are available to try those. They will be arraigned, sent to that docket, and in 180 days, they'll have a trial. Between that time, they can negotiate or have motions heard, but they'll have a trial. That's how we're going to get rid of most of our DUI dockets. So, we will do those specialized dockets with set time frames for those. But otherwise, we try to do it within the time to disposition. And we don't have a lot of continuances because it is, again, an individual docket. And the judge, everybody sets on a day that they're available, so they go.

Chair Jennifer Nash: Thank you. Commissioner Harris.

Robert Harris: Thanks. That's actually helpful, Judge. Appreciate that. So, given they have individual dockets, if someone comes in and they don't have a lawyer, I got two questions. If they don't have a lawyer, is it up to that judge to try and find a lawyer and their staff? And also, just in general, who handles the appointment process in your county? I guess those are my two questions.

Judge Tracy Prall: So, the first question, if someone is out of custody without a lawyer, they are, I think, 99% of them are handled by the analyst that I talked about earlier. So, they're on a call-in system where once a month, they call in until a lawyer is assigned to them. Then they would move through our process, probably still be at our court annex or criminal court annex. But if they had been downtown, the lawyer withdrew for whatever reason, then yes, that judge's office would handle it. But they're not finding the lawyer, the criminal analyst is. So, all the resources she has at her fingertips to do that.

Robert Harris: But the criminal...

Judge Tracy Prall: Go ahead.

Robert Harris: The criminal analyst, is that a county or a state employee or who is that?

Judge Tracy Prall: That's our employee. We got funding for that through the crisis plan.

Robert Harris: Okay.

Judge Tracy Prall: We also, I would say, there's been a lot of talk about settlement dockets or special dockets. We've done settlement dockets since October of '21. We did mass settlement dockets in in custody. I went into the jail to do those dockets. So, we've been doing that all along. The DA has been. They put out lots of

resources. It's a big lift for everybody to do those mass settlement dockets. My docket as a presiding judge, I have a third less of a caseload. So, all of my open space is for criminal settlement conferences. I do at least four a week, generally. And so we do try to move those cases through as quickly as we can, but that doesn't change the MAC. They've already been assigned.

So, really our difficulty is the MAC. We do have lawyers in our county, some very experienced MCAD consortium lawyers, who they are capable of having an open caseload over 200. And then you have other lawyers that are newer who shouldn't have an open caseload more than 100. And so I think that is lost in the MAC, that there are lawyers who are ethically capable of doing more, and in some ways they're told what their ethics should be. And that's where I think they talk about the struggle with saying, "No, the maximum capacity is X. That should be your maximum capacity." And I think they don't necessarily agree with that. There are some that are capable of much more than that per year.

Chair Jennifer Nash: Thank you for that. We agree. The workload model works much better for everyone for exactly all the reasons you've talked about. The trick is converting from an antiquated system that's not transparent and doesn't work well to one that does and the budgetary matching that up.

Judge Tracy Prall: Right.

Chair Jennifer Nash: So, we're working on it and whatever help you can give us with that, we would appreciate. [Laughter]

Judge Tracy Prall: Right. Right.

Chair Jennifer Nash: Are there other questions for Judge Prall? All right. Is there other information you'd like to give us? This has been very helpful.

Judge Tracy Prall: No, I just think that I am one of the only judges who has had access to the OJD dashboard and have watched that. Again, early on, I had to do it by hand, what now Jessica Roeser has been able to put together. And I do think there is this difficulty in reporting, the attorney to MCAD to OPDC, and I don't know how best to fix that, but it could be some requirements of the consortiums – the consortiums are required to do X – but they would need additional funding, I believe, for their staff. I mean, they'd be asking their staff to do something that they haven't been doing. I don't know how it works in the other jurisdictions with their consortiums, but I would also say that the lawyers in our consortiums, if we lost those, if it really does sunset consortiums, Marion County will be broken. That is going to be a huge loss to us. Those lawyers are not going to go to public defender's offices. They're going to go private and then we will lose that tool. I cannot even imagine being ready for that in a year, two years, four

years. That is what has gotten us through since July of 2021. I gave Cott Thompson a call and said, "What can you do? How can you help us?" And they stepped up. And those lawyers are fully capable of doing that. They should be paid commensurately, of course, but I see the issue with how do you line all that up and give a budget to it.

Chair Jennifer Nash: We really appreciate that input as well. As you know, the time for that expiration is legislatively set.

Judge Tracy Prall: Yeah.

Chair Jennifer Nash: We did get a list of all the bills that are going to be introduced, and there, we've seen that there are some that will address that issue. But we recognize that the consortia are very important to courts and very important. They're the bulk of our public defense providers for the state, and we agree that if we lost a lot of private consortia lawyers, we would be in a world of hurt. So, thank you for your input on that as well.

Judge Tracy Prall: All right.

Chair Jennifer Nash: Are there other questions, comments? All right. It doesn't sound like it. Thank you so much for your time. Oh, sorry. Judge Lipscomb has a question.

Judge Tracy Prall: Hello.

Paul Lipscomb: I don't have a question, I just wanted to say hi. Thank you for coming and it's very good to see you again.

Judge Tracy Prall: Nice to see you. [Laughter] All right. Thank you.

Chair Jennifer Nash: All right. Thank you. And thank you very much for your time. Thank you for taking time to explain the court and all the struggles and everything that you've done in the last couple, well, now four years...

Judge Tracy Prall: Years, yeah. [Laughter]

Chair Jennifer Nash: ...to try to address this, and we really appreciate your input and really appreciate you reconvening your crisis team. I'm glad to hear that that was helpful.

Judge Tracy Prall: Yes.

Chair Jennifer Nash: We are hopeful that other counties will do that too.

Judge Tracy Prall: Great. Thank you.

Chair Jennifer Nash: Thank you.

Judge Tracy Prall: Bye-bye.

Chair Jennifer Nash: All right. And with that, that is all that is on our agenda for today. If anyone has anything else they'd like to add, now's the time, speak now or forever hold your peace. All right. Well, we have upcoming workgroups and committee meetings that Director Kampfe already went over. Our next workgroup meeting, which is again, not mandatory, but helpful, is the second Thursday of February, which I believe is February 13th, and if you can make it, that would be great. And then our next commission meeting is the following Wednesday, whatever date that is. The 19th, I think. Yes, the 19th. And we will see you then. Thank you, everybody.

Peter Buckley: Thanks. Take care.