

Members

Per A. Ramfjord, Chair
Hon. Elizabeth Welch, Vice-Chair
Mark Hardin
Paul Solomon
Lisa Ludwig
Kristen Bell
Thomas M. Christ



Ex-Officio Member

Chief Justice Martha Walters

Executive Director

Lane Borg

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, December 17, 2020
10:00am** – approx. 2:00pm
Via Microsoft Teams Meeting

MEETING AGENDA

1.	Executive Session* - PDSC Review of Public Defense Contract Proposals	PDSC & OPDS
<i>Please note that the public portion of this meeting is scheduled to begin at 11:30am PST</i>		
2.	Action Item: Approval of Meeting Transcript – PDSC meeting held on October 23, 2020. (Attachment 1)	Chair Ramfjord
3.	Action Item: Approval of PCRPs Contracts (Attachment 2)	K. Farkas
4.	Action Item: Approval of Public Defense Contracts (Attachment 3)	OPDS Contracts Staff
*	Five-minute break scheduled for approximately 1:00pm PST	All
5.	OPDS Staff Update	OPDS Staff
6.	Public Comment	All

In compliance with the Governor’s Executive Order No. 20-12 issued on March 27, 2020, this meeting will occur via Microsoft Teams Live Event videoconference and will be available for both live-stream and archived viewing at:

https://teams.microsoft.com/join/19%3ameeting_NTdlMmZkYmMtMjk3MS00NmJkLTg1NGEtNmlzZGIwNjFhMGQz%40thread.v2/0?context=%7b%22Tid%22%3a%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2c%22Oid%22%3a%223d7cf095-922e-45b6-ba97-3e8edd1f03db%22%2c%22IsBroadcastMeeting%22%3atrue%7d

*The Executive Session will be held from approximately 10:00am – 11:00am PST. Pursuant to ORS 192.660(2)(f), the Commission will review public defense contract proposals for contracts beginning on January 1, 2021. The Executive Session will be held via a virtual Microsoft Teams meeting that will be closed to the public.

****PLEASE NOTE: The public portion of this meeting is scheduled to begin at 11:30am PST.**

Please make requests for an interpreter for the hearing impaired, or other accommodation for persons with disabilities, at least 48 hours before the meeting to Kaysea Dahlstrom at (503) 378-3349.

Upcoming meetings: PDSC Retreat on Thursday, January 14th, 2021, and the next PDSC meeting is currently scheduled for February 18, 2021. Details to be announced at a later date.

Meeting dates, times, and locations are subject to change; future meetings dates are posted at: <https://www.oregon.gov/opds/commission/Pages/meetings.aspx>

Attachment 1

Chair Per Ramfjord: All right. Welcome, everybody, to the October 23rd, 2020, meeting of the Public Defense Services Commission. Again, this meeting is virtual, we apologize for that but we're not responsible for the pandemic.

[Laughs]

Chair Per Ramfjord: And so I just want to remind people of a few things going forward on this. We do have a Q&A section that you can pose questions on. It is very important that you put your name down when you're posing a question. We will have people reviewing those questions and raising those questions after various sections, but again put your name down for that if you want to have your question read out loud. And then we will try to pause as we go through the meeting to make sure that we can take some of those questions.

Also, just a reminder for commissioners, there's a chat function on this, but if you have an issue, rather than putting it in that chat function, please state it out loud so that it can be part of the record as well. So, with that, with those preliminaries, I want to start with the first meeting agenda item which is the approval of the meeting transcript from the meeting that occurred on September 29th, 2020. Does anybody have any comments on that particular transcript or any corrections that they want to make? Okay, hearing none, do I have a motion to approve that transcript?

Vice Chair Welch: I move that we approve the transcript.

Commissioner Solomon: I move that we accept the transcript as written.

Chair Per Ramfjord: Is there a second? I heard both Commissioner Welch...

Commissioner Bell: Second.

Chair Per Ramfjord: ...and Commissioner Solomon move and I think Commissioner Bell seconded, is that correct?

Kaysea Dahlstrom: Correct.

Commissioner Welch: Correct.

Commissioner Solomon: Right.

Chair Per Ramfjord: Any further discussion? All in favor?

Commission: Aye.

Chair Per Ramfjord: Any opposed? Motion passes, the transcript is approved. The next item up is the calendar for proposed dates for 2021. We had some discussion at the last meeting, you'll recall, about whether or not we needed to add some sessions earlier on in the year, given the legislative session. We've done that

and I'll let Executive Director Borg talk a little bit more about the specifics and then we can have any comment from commissioners.

Director Borg: Thank you, Chair Ramfjord. So, what you'll see on attachment two, the dates that we've added, and we also included the dates we already agreed on there, so it's a comprehensive list for 2021. We had also, because there had been some interest in doing a retreat, we thought that even though it's pretty quick, that January, because that'll be — there's just a sort of ceremonial function that the legislature goes through but they really don't start their business till the first week of February. So, we figured that that would be probably the best time to set aside a time to get further information and do a retreat as we did during the summer.

And then, as you see, we've essentially added a meeting every month. The only ones we're skipping is July, September, and at this point November. We left the June "To Be Determined" because we are ever hopeful that this pandemic will abate enough to allow live attendance and that has traditionally been with the OCDLA Annual Conference. So, that one we've left as TBD, to be determined, but otherwise we anticipate — we're listing Salem as the location — we anticipate it'll be virtual until this situation changes.

Chair Per Ramfjord: Okay, thank you. Any comments from any of the commissioners regarding the revised meeting schedule?

Commissioner Bell: I have a question regarding the date for the retreat, it's listed as January 14th. Do you have proposed times for that? I'm asking because I teach at 3:00 PM that day and I didn't know if this was going to be going at 5:00 PM or if it's possible to start it earlier so that... I don't know what the timing is.

Executive Director Borg: So, we had not set times. I think those are things that we can accommodate though, because especially if did it as we did last time, where we have a central location there in Salem, we can certainly... If people can get started a little bit earlier, I'm sure we can get a lot of time in and then be done at, say, 1:30. If we ended at 1:30, would that give you time to get back and ready to teach?

Commissioner Bell: Yes.

Executive Director Borg: Okay. I'm sure we can accommodate that.

Chair Per Ramfjord: Okay. Any further comment on the schedule? Okay, that was good. Now, getting on to the 2021 Contracts Report. At the last meeting, we had a lot of discussion about how to structure the contracts and so now, we're going to get a little bit of a report on exactly how that has been going. I guess I'll start with — we've got the whole staff here — but maybe start with Heather, does that work?

Heather Pate: Sure, sure.

Eric Deitrick: Oh, I can jump in here, Per.

Chair Per Ramfjord: That's fine, Eric. If you want to jump in, that's fine.

Eric Deitrick: Okay. Chair Ramfjord, Vice Chair Welch, members of the Commission, my name is Eric Deitrick with the Office of Public Defense Services. We are here to give an update on progress since the last Commission meeting and, specifically, the vote the Commission took on FTE contracts. And I'm here to report things are going pretty well. There's the normal, predictable challenges of adjusting to a new model but nothing that's unexpected.

I do want to reiterate the importance of the Commission's vote last month which to clarify, directed our agency and our staff to move toward a FTE contracting system kind of similar to what we do with the Parent Child Representation Program. We were directed to come up with a urban and rural rate, get caseloads within 115% of the NAC standards, and to the extent possible, remain revenue-neutral. And that was a really important vote and I want to compare that to the vote the Commission took about a year and a half ago when the Sixth Amendment Center Report came out and the Commission specifically made findings about the case credit model, the challenges of the case credit model, and directing us to pursue a new model going forward.

That vote certainly memorialized the challenges that we are facing, and as a defense attorney, I know it's easier to destroy something than to build something and so actually having a vote where we are now creating a new model was incredibly significant, because we now are on a path forward. I mean, we've really pivoted and memorialized that change. And the contracts that we're talking about now have values based in equity, transparency, and accountability, and as our staff has talked with providers around the state, they haven't heard any criticism of the Commission's vote. I think this is uniformly viewed as a positive model going forward.

But more importantly, it's a system that's designed to be invested in. When we were talking about case credits and widgets, we had a really hard time explaining to the legislature if they invested more money in our system, what that would produce. But when you have a system designed around caseloads and attorneys covering caseloads, it's very translatable to explain the return on investment that is going to happen if the legislature does do increase funding.

And more importantly, I think it's important for the attorneys around the state who, those of us who've been in this business for a while know that the legislature has historically viewed the case credit model as service providers, and so the attorneys doing the work were never really considered people by the legislature. We were just funding the provision of services.

And with this new model, I do think we're going to start talking about attorneys as actual people, clients as actual people, and the whole conversation around public defense will be more humane. It'll pivot around transactions and widgets towards how many people we need serving people. So, I think that certainly there are going to be some challenges with transitioning to a new model and some of those were noted in the memo, but I don't think it's anything that our staff didn't foresee or don't think they can address.

In looking at how we came up with the potential contracts beginning January 1st, our staff had to use the money we have available to cover the statewide caseload and with the urban/rural split, they came out with 200,000 per FTE attorney for urban regions, 190,000 for attorney for rural regions. That should, with the money we have and trying to get within 115% of NAC, be achievable if we add about 21 attorneys statewide. I know the Commission directed us to be revenue-neutral. There's some language in the memo about how much more this will cost. But I do want to reiterate, and Director Lane Borg has talked about his in the past, we did have \$7 million stripped out of our budget during the 19th Session that legislators in particular directed us to report back if an issue came up and we needed that. And so this proposal gets us within that range, it is a workable and achievable plan.

The public defense community, at least in my conversations, is excited. Our staff is excited and supportive of this vote, they have a ton of experience and these are the kind of changes I think that they have wanted to take, particularly the staff who've been at the agency for a long time. They're really excited about being able to rebuild this system. So, I think it's important to note that this is going to take time. I'm sure there's factors we will discuss going forward, such as different objective criteria for attorney compensation, the rural/urban split issue. I mean, I do think once we get further down this path, we can explore how to improve it going forward. But overall, our staff is hearing mostly positive things. And they'll tell you, I mean, they're making the hard calls first.

So, overall, the last month has been fairly positive. They are available to take any questions you have at this time and with that, I'll turn it over to the contracts team. I do want to emphasize though that we'll be presenting contracts to the Commission probably within the next month. And when we do so, we'll be taking your questions about county-by-county specific issues in executive session and we're happy to do that. But I don't necessarily think at this time we're prepared to, nor do I really think it's appropriate with contract negotiations occurring to take a bunch of county-by-county specific issues. But otherwise, with that I'll turn it over to the contracts team.

Chair Per Ramfjord:

This is Per. Let me just mention a couple things on that. I do think it's important for everybody to bear in mind that this is a process in which the contracts are under negotiation right now. Contracts actually do get

presented to the Commission. When they're presented to the Commission, that is an executive session and then we can look at specifics. I also think that it is important to bear in mind that we did include in the meeting materials some comments of individual providers who have some concerns, particularly those providers whose pay rate may be going down. I don't know whether the staff is, or whether this even is the appropriate venue to deal with some of those, but I think it's useful for the Commission to be mindful of the kinds of comments that are coming in and to know about that.

In addition to the positive comments, I have also received some positive comments from some individual providers who just think that it's the right thing to do to move to this type of model and that it's meaningful change. But I think that to the extent possible, as staff is sort of going through this, if they can give some discussion of what their feedback has been and how they're going about the process of dealing with and negotiating these new contracts. Thank you, I just wanted to get that out there.

Heather Pate:

Thank you. Good morning Chair Ramfjord, Vice Chair Welch, commissioners. I'm Heather Pate, the contracts manager, and with me today is Amy Jackson and Billy Strehlow, contracts analysts, and Shelley Dillon, data and research analyst. I just want to reiterate a few things that Eric said. We really appreciate policy direction given to us at the last Commission meeting. This has allowed the team to focus on the policy items and begin to engage in conversations with providers regarding the steps to statewide system change. The team's excited to move forward implementing the Commission's policy direction, ensuring the system as a whole is more transparent and sustainable.

One of our highest priorities is systems sustainability, allowing our providers to continue to provide much-needed services going forward. Amy and Billy have been talking with providers since the last Commission meeting, listening to their concerns. We understand that each contractor operates within a unique set of circumstances, from the county they do business in to the court they primarily work with.

The system we work in is complex, as I'm sure you understand. Balancing caseloads' different needs and jurisdictions such as specialty courts and different charging practices around the state. It truly isn't a one-size-fits-all. It's much like playing Jenga. You pull one piece out and wait to see the effect it has on the other pieces. We continue to gather current FTE numbers for each provider and are updating our assumptions as we go. Analysts are having conversations and generally the provider community understands and is supportive. You have the write-up in your packet and we're here to answer any questions that we can.

Chair Per Ramfjord:

Okay. Do members of the Commission have questions? I'm sure, please go ahead.

Executive Director Borg: Per, just a second. I needed to give a little more of an update.

Chair Per Ramfjord: Sure, sure, that's fine.

Executive Director Borg: Thanks. So, Commissioner Ludwig had asked a question in between the meetings that pertains to contracts about contract analysts. I think that the perception there's maybe only two contract analysts right now. Actually, Caroline Meyer is still a contract analyst. We are moving even more counties over to PCRCP so that while she works primarily in Parent Child Representation and she does statewide contracts, that's still capacity within that team. And we have added — we are bringing on two additional people. In part, because we have the openings and we need to fill them, but also frankly, and I say sadly, for succession planning because some of our contract analysts will be before we know it, before too long, will be retiring. This is a very complex job and it's not something you just pick up in a week.

And so we have two — one person started this week, the other person starts next week, and we'll be introducing them at the next Commission meeting more formally. But that was a specific question that we were asked about analyst capacity, and we actually will be full as of next Monday. And then the only other update I wanted to give sort of in supplement, I had an opportunity on this contract modeling to talk to David Carroll of the Sixth Amendment Center.

And to be fair to him, it was a very quick sort of run the idea, run the resolution past him, and what we're seeing, and I think it would be worthwhile engaging him more formally and sending the plan to him to have him review it and score it against what he saw in the Sixth Amendment Center Report. But he was generally positive and favorable to it. He made me swear that I would put on the record that [Laughs] he does not support 115% of the NAC standards. He understands, and I reminded him, I said, "Very likely when the ABA study comes out, it'll be lower than the NAC standard. But we needed something when we moved to this so that we weren't sending money out for staff and then not knowing what the expectation was."

So, I think that was an important part to, in the interim, to cap that. But obviously in the future, we need to address that more formally. But he did say that he felt that in terms of the compensation rates, that nationally we would be pretty favorable. We're going to be certainly in the upper quartile or higher in terms of what we pay for a caseload. But he said when you look at the West Coast, we're probably midrange. That when you look at Washington, Oregon, California, that they're certainly jurisdictions that pay more. But that's true, really, about almost everything. I mean, for a long time, I've certainly been aware of it in terms of professionals, that when you look at Seattle, Portland, San Francisco, and Los Angeles, that Portland is generally the lowest market there.

So, in any case, I just wanted to give that context that we are not only what the contracts team reported, what Eric covered, but I think it's important that we keep going back to the Sixth Amendment Center Report that I think was very impactful and say, "Okay. How does this compare to that?" So, I wanted to give the Commission that update.

Chair Per Ramfjord: Okay, thanks. I wanted to go ahead with the staff on this then. Or any questions, excuse me, any questions from commissioners?

Commissioner Christ: This is Commissioner Christ, can you hear me?

Chair Per Ramfjord: Yes.

Commissioner Christ: At the last meeting when we adopted this option, we were told that it would cost to 5 to 10 million per biennium. Is that still the price tag now that you've developed the model further and if so, do we have that money?

Billy Strehlow: We don't know yet.

Heather Pate: So, Commissioner Christ, Chair Ramfjord, we are still determining FTE, right? We're still talking to providers, checking on how many attorneys they have today. Remember, the numbers we gave you were off of what providers submitted to us back in May when they submitted to the RFP. So, Amy and Billy are still checking and right now, as it says in the write-up, it's about 4 million a year increase but things are changing all the time as we're ratcheting down what we really know about what's going on out in the provider community.

Executive Director Borg: Commissioner Christ, if I could give some further context for that also. As Eric Deitrick mentioned, we were in the PSA, in the Public Service Account, that these funds as well as the funds for the attorneys, as well as the NREs, the legislature took \$7 million out of it and when Rep. Stark asked the question specifically and put on the record, both at Ways and Means and on the floor of the House, the answer from Ways and Means chair was that they do this regularly because they know that that's an area when if the caseload shows up or if the need shows up, that we have come back.

And the agency's come back, I think, every single biennia at the long session to ask for a rebalancing bill, like a lot of agencies do in [Inaudible 00:21:47]. In 2019, we got about \$4-1/2 million out of that rebalancing bill. We are in, with Julie and myself, we are in contact with LFO, with the legislature. We've run this plan, this idea, past them and at least — I don't want to completely speak for LFO — but they're supportive of that. They like, as Eric Deitrick reported, they like the idea of understanding what they're buying now there. And so we are working with them and we are in development of that rebalancing package and this is being included in that. Now, the PSA is all expenses — death penalty, NRE, investigators, experts, the attorneys.

And so when they look at that, they're looking at, "Well, it's during the pandemic, you're spending a little less over here." They're not going to give us money for this contract that ignores that, they're looking at the total package, and I don't want to jinx it but Julie and I feel very confident that we're going to be well within that \$7 million marker that was put down when they took that out of there in asking for that rebalancing.

So, again, I don't want to jinx us in any way, but I think we're in good shape on that. I certainly, based on the record that was made and the work that the staff has been doing and the direction that the Commission has given us, I'm probably going to go and ask for that because I think that we can demonstrate this is where we're investing it and what we're spending it on. And it's exactly the amount of money we told you in 2019 we needed to do this. And they specifically took that out, saying, "Come back if you need it."

Chair Per Ramfjord: So, as I understand it then, what you're saying is that the... Well, this current proposal or this current strategy calls for some additional funding. It is within that range of approximately \$7 million which we believe the legislature has made fairly clear that we're able to get, we will be able to get if we need it. And this proposal is a way of showing that we do in fact, or will in fact, need that money. Is that fair?

Executive Director Borg: Yeah, that's correct. And the thing that also gets added into there — sorry, I'm hearing my echo feedback — is that I should have mentioned as part of that rebalancing is the Ramos impact, because that is part of our mandatory budget. And then also we have been tracking and working with the executive branch and the legislature on submitting COVID federal assistance. Because some of the money for habeas, some of the money that we can attribute to the pandemic, we are seeking reimbursement from and we're getting — it's not a lot of money — but I think we'll be able to get some of that too. So, we're working very closely with LFO and keeping the executive branch informed of what's going on. I think we're going to be in good shape and I don't think that we're going to be out of the norm of where we've been every single long session that the agency has existed.

Chair Per Ramfjord: Okay. Do other members of the Commission have questions for the Executive Director, Eric, or staff on this issue?

Commissioner Solomon: I have a quick question, Chair Ramfjord. You had referenced communications from providers about this new policy. I'd like to hear a little bit more about what those communications were and how this is being perceived in the provider community.

Chair Per Ramfjord: Sure. On that, attachments 3A through D of the packet includes some email communications from certain members of the community. In addition to that, I think it's worth noting that I just received emails myself from Brook Reinhard who was very supportive of this whole move onto this kind of system. But some of the concerns here do have to do, I think, with what I

would characterize as how we're going to deal with moving some people's compensation potentially down, how that's going to play out. I think that at this point in time, it's very difficult — and the staff can correct me if I'm wrong — but it's very difficult to answer exactly how these things are going to work out because they're still in negotiation.

But I think that the purpose of including some of these communications in the materials for the Commission was to let everyone know a little bit about what people have been saying, what some of the issues are that are being dealt with. And I think that when we get to the final point of actually approving contracts in the executive session, we may have more specific discussions on these particular types of communications and how they've been resolved. And if I've misstated anything, [Laughs] Executive Director Borg or staff, let me know. But that's kind of my understanding of what we were trying to do here.

Executive Director Borg: No, I think that's exactly right. I guess at the risk of trying to characterize for Commissioner Solomon the comments we've gotten in, which I've been very pleased by, frankly. I mean, it's appropriate advocacy for particularized contractor situations so that we can better understand the challenges they have. What we have not been getting, or people have not been willing to — that's just the way they feel in their heart of hearts — have not been willing to say is that, "The whole idea is bad, this is a terrible thing."

Now, I understand it's hard to speak against equity and transparency and accountability, but I've been really pleased that the input we've gotten, and we included those that we've gotten in time to send the materials out, have really been thoughtful, responsive, and appropriate to their particular situations. And that's exactly the kind of thing that the contract analysts have the experience in dealing with and in talking to them and trying to work out and accommodate.

I will say that the — and we've been in communication with the provider community on this too — is that the comments, specifically the other aspect of comments, is on juvenile representation in some particularized counties. I think the solution there is a little bit different and we are working on that even this week, which is that we need to see if we can get more of the IV-E money than the splitting it 50/50 with the legislature. We got 4-1/2 million and that has allowed us to move forward with expansion in Benton, Polk, Clatsop, and Douglas. But if we could get more of the IV-E money, then we would be able to, I think, start solving the problems in some of those other counties where we need to, frankly, move them to PRCP. That's going to take political will and that's going to take input. We've got good support on this but we need to and we are in the process now of communicating with those people what the challenges are and what we believe would be the solution there that would essentially be funded by the federal government.

Chair Per Ramfjord: Yeah, and just so we're clear on that, part of the issue that I think Executive Director Borg is talking to is the notion that if you have counties that have PRCP and then they also are going to this system and you're going to have criminal providers being paid less than juvenile providers, that's an issue. The way to solve that is actually to try to level things out with additional funds from other sources and from the legislature, not to just abandon the system completely. Commissioner Christ, yeah?

Commissioner Christ: This is Commissioner Christ again. I noticed in the contract memo that's in our meeting materials has the urban/non-urban floors at 190 and 200, which is substantially less than what was presented at the last meeting. And I'm wondering, is the provider community just now learning about those lower numbers or is this something that's been out there for a while? I guess what I'm getting at is this — I'm surprised when you say that the community has been supportive. I would expect that there would be a substantial amount of pushback and I'm wondering if it's yet to come. Have those numbers, the new numbers, been out there for a while? Or are they just visible today?

Billy Strehlow: I can talk to that. Yeah, Chair Ramfjord, Member Christ, those numbers haven't been out there a long time. But in the conversations that we've been having with people, they understand the numbers, we're working through the FTE amount. That is new to them, so having to wrap your head around an FTE now represents a caseload. There's a lot of concern. Initially, there was complication with that as they thought we were asking to them to take on way more cases than what they can handle for a lot less money. When they start to understand that, no, that's actually a cap on the caseload, then it becomes more of a, "Oh, I understand the sustainability of this now." And so that's been really helpful in those conversations.

The amounts, we do have some flexibility as the Commission directed within that range to work with providers if they are coming close to that, maybe a little over, a little under, to be able to reach an agreement. And I think that's going to help us with probably everyone except for the few juvenile contractors that we were just talking about.

Executive Director Borg: Also what they should have clarified in there is that that rate is for the attorney, that would also include overhead, a portion of the support staff, your non-personnel overhead like rent and things like that. When providers have had investigators on staff separately, we're paying separately for that, and if a provider, including consortia, if it's large enough to warrant basically separate administration as a duty, we're going to be paying for that. And I also want to remind people that actually, it's a floor, so that's what Billy Strehlow was talking about is there's some flexibility, it's not exactly at 190 and exactly at 200.

But when you add those components together, what we were finding was that, one, it gives us clarity on what we're paying for, but it's not like

massive numbers or contractors are getting a lot less. And so I think that that's why once they walk through that, it's not this big shock of, "All of a sudden my budget is completely falling apart." They're able to say, "Oh, if you build in the components of investigator and administration and those features," that they're a lot closer to being whole. And that's the sustainability from an administrator's perspective. They're looking at is, "Am I whole or am I getting cut?" Is that correct, contract administrators, in your conversations?

Billy Strehlow: Yes, it is.

Male: Chair Ramfjord...

Commissioner Bell: I just...

Male: Go ahead.

Commissioner Bell: Sorry, this is Commissioner Bell. I just wanted to follow up on Commissioner Christ's question about the rural and nonrural. I remember at our last meeting, we had a discussion about that rural/non-rural distinction and that it may not be tracking the realities of cost of living in these various locations. And I specifically remember that Hood River came up, and we indeed got a letter from someone in Hood River. And the coast also came up and we got another letter from someone on the coast.

And so these are real problems and I'm wondering what the response to these communities is and whether that response can include something that going forward... Because I know we said this is something we want to take a look at to be clear about sort of what the plan is and what the timeline is for looking at that. Because I think it may be easier to be able to accept this if there's a plan going forward or something like that. So, I'm just curious what's the response here?

Executive Director Borg: Billy, did you want...

Billy Strehlow: Yeah, I sure can. Thank you, Chair Ramfjord, Commissioner Bell. We're very confident with the range that you've given us of 190 to 205, that we can address that with each of those that we identified as outliers or coastal communities and the Judicial District 7. Their amounts don't fall in a non-urban category but they fall within the range between non-urban and urban. So, I think we're going to be able to look at those counties and determine that it will be sustainable to bring them up to a level other than non-urban in order to accomplish that. And that I think there's some criteria we'll need to look at for that but I'm confident that we'll be able to reach agreement in all of those counties.

Heather Pate: And I want to — this is Heather Pate — follow up on the second piece of that question where you asked for a plan going forward. As you know,

contracts will be for 12 months, so we will have to put something out in the first part of the year. We're thinking about it but we're focused on what we're doing right now. So, we do know that when we're talking about what the next contracts look like starting in '22, we will have a better plan for the non-urban/urban situation and have a little more to be thoughtful about how we're going to work with that. I think that answers your question.

Commissioner Ludwig: I have a question, this is Commissioner Ludwig. And it sounds like someone needs to Mute because we're getting some extra noise. Can everybody hear me?

Chair Per Ramfjord: Yes.

Commissioner Ludwig: So, I just want to make sure that I understand completely what the plan is with these contracts and what it does and doesn't kind of address. Because my understanding is that we're trying to move away from this case credit model because essentially, it creates a conflict of interest between the attorney and the client, because the attorney has a financial interest in doing more cases in order to make more money and that can depress quality.

So, what I'm seeing here is that the proposal is to pay a contractor about \$200,000 a year per full-time caseload with an appropriate cap. And that amount of money is supposed to cover the attorney's salary, overhead, and their staff person. And it doesn't build in any time for, for example, a senior attorney who spends time supervising younger attorneys. In other words, I'm not hearing anything that allows an adjustment for a supervising attorney to take 10% fewer cases so they can spend that time supervising and training newer lawyers.

I don't see anything in here that accounts for an adjustment for paying more senior lawyers more and less senior lawyers less, although I assume you kind of expect that to happen at the firm level. And then I don't see any adjustment... I mean, it seems like the adjustments that will be made will kind of be made at the discretion of the contract analysts. And that's sort of at the contract level, I suppose.

But what I'm concerned about is that I fear that this raises some of the same conflict of interest problems that we are trying to address in the first place. I mean, can these contracts mandate that the staff person be a full-time staff person? Do they mandate a particular hourly rate or a particular minimum qualifications or the amount of time that they spend on these appointed cases as opposed to office management and staffing retained cases for that contractor. And I guess what I'm concerned about is that this doesn't seem to solve the essential problem of if you pay an attorney \$200,000 a year, let's just say a solo contractor, and you expect in the language of the contract that that person have appropriate staff for their full-time caseload, that attorney has an incentive to hire a teenager at 12 bucks an hour for 10

hours a week as their staff person and pay less and provide lower services to the clients in order to pay that person, themselves, more.

And the same is kind of true when you have a firm contract where you have the actual contractor, the leader of the firm, being able to take the money that you're allocating and pay themselves more and pay the lawyers and the staff less. And of course, more robust staffing and better supervision are things that will improve the quality of services. I think we know that from all the studies and that's why PCRCP has case managers built into the concept.

And so I still have concerns about this model because when we start talking about putting mandates in the contract for certain staff, then everybody starts getting worried about this being an employment agreement that makes these people state employees. And so I'd like more clarity about that, and I'd like more clarity about how we're going to avoid that conflict. Of course, as you well know, I think the solution is hourly, more hourly model payment, but I guess we can get to that during the next two sessions. So, those are my concerns.

Executive Director Borg: So, I'd like to address those, Commissioner Ludwig and Chair Ramfjord. First of all, maybe I was unclear. We are building into, when a contract is large enough, and by that I mean it has enough attorneys, we're not going to pay for an administrator for a two-person consortium. But when we're talking about the large nonprofits, the larger consortium, we're building in supervision, we're paying for that. And so I'm not sure how that's not addressing the idea. I mean, we're already accounting for the fact that, for instance — and I don't want to get into...

[Crosstalk 00:42:30]

Commissioner Ludwig: I'm sorry, Lane, to interrupt you but I'm not talking about administration like the person who literally hands out the cases and keeps track of all the contract issues. I'm talking about supervision by attorneys of younger attorneys. The sort of thing that, for example, Jack Morris would do with an associate that he's not getting paid to do.

Executive Director Borg: Okay. So, I'm not being clear, I apologize. When I ran Metropolitan Public Defenders, I had supervisors that had diminished caseloads that then part of their job was to supervise and develop and train. That's continuing. I don't know what we've said to indicate that that's not continuing. That's what we mean by administration. Now, it is more challenging in consortia because we recognize that that's always been a challenge when you have an association of contractors, of providers, that are not in the same firm and so they have a different relationship on that.

But we've addressed that in PCRCP where we specifically pay, in Lincoln County, we pay for administration there. We can define what we need and want out of that and that's going to be part of the contract terms. So, I think

we are accounting for that. Now, we do have a pretty significant limitation to one of the questions you have, or one of the comments you have about staff, is that while we can say that this is what we're contracting for, that you would have a support staff, that you'd have an office, that you'd have these components that we think are necessary. We're not going to be able to pick exactly who that person is.

Now, if we feel that there is somebody that is inappropriate or somebody that is engaged in that, we're doing that with PCRCP now. Keren Farkas is adjusting and saying if you have a part-time person, "We're paying you for a full-time person, and yet when we check and see, you have a part-time person." So, those contracts will be adjusted accordingly. The thing that we can't do is to go in and direct the salary. We've built this model understanding what's available for salary and what's available for non-personnel overhead and support staff, but we can't direct — because they are independent contractors — to say, "This is exactly how you're going to spend the money." If they choose to pay a support staff person higher and themselves a little bit less, that's going to be a choice they have.

We do expect that in larger contractors, and by that again, I mean numbers of attorneys, that there would be a differential in pay just like there is at the nonprofits. They have negotiated labor agreements that have a differential in pay. So, we're not going in and micromanaging this to the point that we're saying like, "Only this money can be spent in this specific way on an attorney or on a support staff." We have to rely on it. We are requiring, in the new contracting model, transparency. In other words, that we are requiring that if you're a member of a consortia, you have a right to see what the contract is, what the money is out there. In that regard, we have to rely on self-advocacy. We have to rely on people then advocating for themselves.

But as I said on a contractor call just recently, or provider call recently, if a consortia decides that despite the fact that we have a line item for administration, and they all see what that is, if they decide that there is some centralized service that the consortia administrator is providing to them and they're willing to pay for that, that is going to be an individual contracting thing that we can't prohibit. I think that's where we do have limits on contractors.

But the reason why I would defend and say that we are not in the same problem that was identified in the Sixth Amendment Center Report is that without having a public employee model, we are essentially replicating that at the private level. We are buying people's time and capacity. That will be defined as to what their time and capacity is. Are they selling us all of their time? Are they selling us a portion of their time? And then we would have something to measure that against in terms of how many cases are you doing, how much work are you doing, are you actually working at this or are you not working at that?

And then the final thing would be that we have to depend on the market. If a provider's doing a bad job and if we're doing a better job of oversight, then the question's going to be is there somebody that's willing to do a better job and are they willing to do it? I think at these rates and I think as we hopefully improve that, we may see that there is some competition out there, that there are people that are willing to do that. So, I don't know if that answers you.

Commissioner Ludwig: I have a follow-up, which is I think that in the PCR model, you have case managers that are separate, right? They're paid separately, they're sort of funded separately, and they're built into the process. Am I right?

Executive Director Borg: Yes.

Commissioner Ludwig: Okay. And they're pretty well-compensated, I mean, at least there's a standard rate of compensation for them, right?

Executive Director Borg: Right.

Commissioner Ludwig: Okay. And so you sort of avoid that problem in the PCR model by having sort of outside staff and kind of like you pay an investigator, right?

Executive Director Borg: Right. As I understand PCR's development, I wouldn't say that that was the primary reason for that. I think the primary reason for that was that unless you get to a large... It wasn't until we got to Multnomah County where contracts like YRJ's were so large that they had more than one case manager that does exclusively work for there. So, in order to have a model where a case manager... We couldn't have a case manager be an employee of Metropolitan Public Defenders and then do MDI's case management. They needed to be independent contractors themselves. And so that's, I think, the genesis of the separateness that way. But yes, you are correct, they're contracted with separately.

Commissioner Ludwig: And they're not paid out of the attorney's kind of...

Executive Director Borg: Correct.

Commissioner Ludwig: So, that doesn't come out of the attorney... That case management doesn't come out of a PCR attorney's budget. Like their individual, their FTE. But in the contract model that we're talking about, there's no provision for outside case managers and thus all the case management has to be done by the attorney staff and it comes out of that \$200,000-ish, around that amount.

[Crosstalk 00:49:23]

Commissioner Ludwig: To the extent that I get to have case management, it comes out of their own staff and their own budget?

Executive Director Borg: Commissioner Ludwig, case managers are not like legal assistants. They're not supposed to do your scheduling appointments or assisting. Case managers, if we use that term, and we maybe could use the term social workers, their specific job is to work with primarily parents in building plans to make them successful for reunification or to be successful in working through their plan. Because as DHS would say, "Well, in order to have reunification, we believe you need this, this, and this. This class, this thing." So, the case managers are not doing legal assistant work, and in fact, we do require PCRCP people, contracts, to have their own staff that's a portion of the money that they're given.

Commissioner Ludwig: Mm-hmm.

Executive Director Borg: And then...

Keren Farkas: I'll...

Executive Director Borg: Go ahead.

Keren Farkas: This is Keren Farkas, regarding case managers in non-PCRCP counties, I just wanted to clarify that the services of the case manager can be requested through an NRE. So, it's not something that the attorney would have to incorporate into the salary they're getting directly from OPDS. It could be something requested on a case-by-case basis as they would for an expert or an investigator.

Commissioner Ludwig: Mm-hmm.

Keren Farkas: So, just to clarify how the case manager can still be something that any of these non-PCRCP counties can request, based on the need in that case.

Commissioner Ludwig: Sure. And that's in PCRCP cases. I guess what I'm getting at is that the function of a case manager is to provide holistic help to the parent represented in the case. And our job as indigent defense providers is, for adults charged with crimes, is also to provide holistic defense. Not just to represent them in the case but also to identify the problems that can be solved as part of the prosecution process. And I guess what I worry about is that lawyers who invest in case management as part of their fixed amount of money probably get better outcomes than lawyers who pay themselves more and have less staff to help and less essentially case management that's done by their legal staff, their legal assistant. That's what I'm concerned about here, is the lawyer has to kind of make a choice.

Chair Per Ramfjord: Yeah, let me just interject on that. I mean, I think that's a completely legitimate concern. I think that's a concern that we've actually talked about to some extent in the past. And I think that the only way in which we're really able to address it right now is the contract proposals that come in

should have some description of how the staffing is done and how it's going to be set up. And that is part of what goes into a process with negotiation. Maybe staff can correct me on that, but my understanding is that that's as much as we're doing right now. Does that mean that we couldn't improve in the future and couldn't move to a model that more specifically calls out for certain funds to go to staff versus attorneys? I think we certainly could and I think the goal is that we would move toward that.

But I agree 100% that it's a legitimate concern. It's a slightly different situation than PCRP is right now because PCRP is structured a little bit differently. But I think we want to move toward a system where we're actually, by virtue of the contract model, providing more governance over how the staffing is provided to ensure that we're actually delivering the best services to the clients that our providers are serving. And staff, if you have any comments on that you want to add, that would be great.

Commissioner Hardin: I'd like to follow up, if I may. I agree with the points, especially made in the original question by Lisa and also with Per. But I also recognize that we're in the end of October and what we can do between the end of October and entering into new contracts is limited. However, going forward in the future contract cycle, I hope that we will seriously look at elements of a good staffing plan, considering mandatory elements of a good staffing plan, which includes supervision, appropriate support. Not to micromanage but just to provide some guidelines for contractors. So, that's my comment.

Billy Strehlow: Yeah, I have just a quick point of clarification, too, this is Billy Strehlow, Chair Ramfjord, members of the Commission. In a non-PCRCP juvenile case, a case manager is available under the nonroutine expense process, so I just wanted to make certain that was...just a point of clarity on that.

Chair Per Ramfjord: Okay. Do other members of the Commission have comments or questions regarding the contracting process? Okay. I think we've completed discussion on that then, recognizing that we are going to have to move forward with specific contracts later which we'll be able to review in executive session. I do want to make sure that there's not any questions from the Q&A that we need to respond to at this point in time.

Kaysea Dahlstrom: Yeah, this is Kaysea Dahlstrom. I think it would be a perfect opportunity if you want to read the questions that are currently published in the Q&A section into the record and OPDS staff and commissioners can respond as they see fit.

Chair Per Ramfjord: Okay. The first question that is from Michelle Bartov is when can providers expect to hear from OPDS regarding the proposed contracts for 2021? And staff, do you want to respond to that?

Heather Pate: I believe Michelle is part of Grande Ronde Defenders and that call will be made in a couple of weeks.

Chair Per Ramfjord: Okay. The next question is from Chris Kaino, the question why there is an urban/rural divide has never been answered other than, "That's what we did with PCRP." Why is my work in Clatsop County worth \$10,000 less than work done 100 miles to the east? And I think that to some extent, this is something the Commission did itself and I don't think your work is worth less. But obviously, there's traditionally pay differentials based on location for all kinds of jobs. And I think that while there may be in the long run some further consideration of these issues, I think the Commission itself felt that having a model that paralleled PCRP at this point in time was better than having a different model that did not do that.

So, I think part of this was directed by the Commission itself based on what it thought was the wisest approach, given what it had done in PCRP and given other factors. But that does not mean that at some future time that it could be revisited for both PCRP and this structure. But right now, that's where we are and how we divide it is another issue. I think that we may end up revisiting. But there's certainly no sense by any member of the Commission, I don't think that somebody's work is actually worth less, it's just a question of what the market is. Anybody else want to comment on that?

Commissioner Solomon: Chair Ramfjord, this is Commissioner Solomon. When we talked about this, we had a pretty robust conversation about what drives factors around cost of living. And my understanding was we actually were going to come back to this in the future and come up with a model that was more effective in really taking a look at the economics in each county. So, I hope that that's the case. That's my understanding, that moving forward, we actually are going to come back and revisit this.

Commissioner Christ: That's my understanding as well. This is Commissioner Christ and I voted against this proposal at the last meeting because I thought the urban/non-urban divide is a pretty crude approximation of the cost of living variances around the state. But it was a rough attempt, as I understood it, to try and adjust compensation to providers by taking into account the supposed differences in cost of living. And clearly, I think I was the one that remarked about the Hood River exception at the last meeting. It's listed as non-urban but it has high housing prices and I know Clatsop County does as well. I hope that we would find some better way of adjusting the expenses of living around the state going forward. I share Commissioner Solomon's hope in that regard.

Executive Director Borg: I want to be clear, that was my understanding of the vote and decision too, that this is something we do need to look at in the future. I think it's appropriate when we do that though, and I think going back to one of the reasonings for why it was kept in the mix at this point, is that when we do that, we should also do that with PCRP, frankly. We need to look at it comprehensively. We shouldn't say, "Well, the urban/non-urban divide

doesn't matter or doesn't make sense in the adult contractings but it does make sense in PCR. So, when we look at that, I think it needs to be looked at comprehensively and I don't want to preview my thoughts on that but I suspect if there's differentiation, it's not just binary, you're either here or you're there. I think it's going to be more nuanced than that.

And I will say that we have, I mean, already again, the contract analysts have a history of when we've implemented PCR, we've made some adjustments to that where we ask questions and look at, "Well, what is the overhead in your county?" Because those are — even though we have this sort of macro distinction — this is what they do best, this is what they do in working with those individual providers is to make sure that it's going to work for them and that this is they're trying to keep them whole. It's not just a matter of giving money because somebody complains, it's a matter of going in and asking questions, and say, "What is it like?"

Commissioner Bell: This is Commissioner Bell. I just wanted to follow up on that. Do we have a concrete timeline for when we are going to revisit this question and what the process for that is, that we could put on an agenda so it doesn't get pushed back?

Executive Director Borg: I guess I would suggest this could be a perfect beginning point topic for a retreat in January to say, "What are some of the..." Because I think what it's going to take is then getting information, having a discussion about values, and then getting information, and then start going through the public process of saying like, "How do we reconstruct that?" And we are talking about contracts starting in January that would be one year, so as Heather was indicating, the process unfortunately is we're not going to have a long break before we're right in the middle of trying to rebuild another contract and that's going to be for contracts starting in 2022. And so I think that the perfect time to start that conversation would be at a retreat in January.

Heather Pate: And if I can just jump in, this is Heather Pate. Shelley, our data research person is already starting to look at things that she could bring to the retreat in January so we can start having that conversation, just so you know.

Chair Per Ramfjord: Okay. So, I think that that's a fine idea, to go ahead and put that on the agenda for the retreat. I think the other thing I would bear in mind though is that I don't think we want to go to a system where we end up having differing dollar amounts for every county in the state. The whole goal of this new system was to be more transparent and clear about what we're doing. So, while I recognize that, and I agree, that the urban/rural split that we have, or urban/non-urban split that we have right now is not necessarily the best thing, I want to make sure that we don't just abandon the idea of transparency by giving individual amounts to different counties.

The next question on this point is again from Chris Kaino and I think it's related, it is how do I explain to my legislator that my work is worth less in Clatsop County and that less taxpayer dollars will flow to Clatsop County in attorney payments than will flow to valley counties? I think the whole point here is that we're working on this, this is a crude system, as Commissioner Christ said, and I think our hope is to change it. Moving on, there's a question from Bruce Liebowitz. How do you value a full-time attorney handling a misdemeanor/lesser felony caseload versus a murder/Jessica's Law/Ballot Measure 11 caseload? How will you distinguish between contracts that have vastly different case mixes?

Billy Strehlow: Yeah, Chair Ramfjord, members of the Commission, this is Billy Strehlow again. We would weight the cases, that's 115% of NAC so the FTE. One FTE represents a caseload, whether that's 400 misdemeanors, 150 felonies, that's weighted to account for all of that. And we certainly hope to refine that going forward.

Chair Per Ramfjord: Okay. The next question is from Eva Rippeteau. Could COVID-related expenses include personal protective equipment such as masks, face coverings, gloves, and sanitation and cleaning supplies for providers and staff that need to have an in-person meetings, go to jails, and court?

Executive Director Borg: I don't know if she's listening, Julie is exactly the person to answer this. [Laughs]

Julie Fetsch: Yeah, I can answer that one. I wasn't sure if you wanted me to weigh in on that.

Executive Director Borg: Yeah.

Julie Fetsch: So, I think that's in response to Lane's comment that we were seeking reimbursement for some COVID-related costs. So, the agency is able to seek reimbursement for its own costs for its own people, but we cannot seek reimbursement for those costs for subcontractors. That's their own business expense, just like their pens and pencils and everything. We're responsible for ours, they're responsible for theirs. So, we cannot seek reimbursement for subcontractors' COVID-related personal protective equipment.

Chair Per Ramfjord: Okay, thank you. The next question is from Rebecca Schaleger. She says, "I am the administrator for juvenile contracting, Clackamas County. You have my letter in the appendix. We are generally supportive of moving to an FTE system with some questions and concerns, but when you're moving some but not all counties to PCRP, it creates a huge problem in regards to services and pay. Why are we worth less than those in Multnomah County? The salaries OPDS is proposing pays us less. We are a 20-minute drive to Portland but we get much less financially and we have no case managers. This needs to be addressed in the upcoming contracts." And I think that, again, we've talked about this a little bit already. I think everybody in the

organization is concerned about this specific problem and our goal is to try to address it as best we can. But if people want to comment further on that, if anybody on the staff want to comment further on that, I'd say go ahead.

Executive Director Borg: The only thing I can reiterate is that yes, we have known that this is an issue. It was an issue I raised during the 2019 session with leadership. It's an issue that we talked about because I could see this coming as you start having — especially in the metropolitan area where people are so closely located. I had met with the presiding judges at the time in Washington County, although she's left for federal court now, and with Judge Steele to talk about this.

So, this is an issue that we're very aware of and that was why we are seeking... Because I think that the best solution without completely depleting all of the rest of the PSA is really to seek an adjustment to the IV-E dollars to fund PCRCP in as many counties as we can, particularly in these counties, like we've done with the expansion that we negotiated this last summer on getting PCRCP in Benton, Polk, Clatsop, and Douglas. So, it is something we're aware of. I can't promise a solution because it requires the agreement of people outside the agency. But we are working on that and we're certainly aware of that and will be calling on Rebecca and others to help us in making the case, because I think that she has a very salient point.

Chair Per Ramfjord: Okay. The next question is more in line of a comment, it's from Brook Reinhard, and it goes to the point that Commissioner Christ was making. "Commissioner Christ, speaking to your question, I don't know how many contractors have actually had communications with their analyst yet. I know OPDS was prioritizing talking to contractors who were looking at larger adjustments and that's fine, but know the news that the numbers were smaller was not publicized until the meeting agenda came out this last week." That is the news that the overall numbers, the 190/200, would be a little bit lower.

Next is another comment from Rebecca Schaleger again, "Yes, a case manager is available in an NRE in Clackamas County. We do not have anyone doing this work. It is up to us to try to find someone to do this and then ask for the funds to pay for it. The person we had to do this work left to do the case manager's in Multnomah County, which is another collateral consequence, negative collateral consequence of this differentiation between PCRCP counties and non-PCRCP counties." I think we're mindful of that and that's an unfortunate consequence and I think we do want to address that going forward.

The next comment is from David Hocraffer, if I'm pronouncing that correctly, "Social workers should be available to criminal defense attorneys through the NRE process, especially in more complex felony cases. NLDA did a national study and a report on this a few years ago, where the nature of case manager contracts are on an individual pool basis. It's an important

resource for OPDS to develop and make available to contract attorneys via NRE process and criminal caseloads. Can this be considered?" I can tell you as the Chair of this Commission, this is something I have believed for some time, I think there are other members of the Commission who believe that this is a good idea. I think we've been talking about this going forward and I think it is something that will be considered. I don't know if other people want to comment on that at this point in time, but I think that's a worthy goal.

Keren Farkas:

Hi, Chair Ramfjord, members of the Commission, this is Keren Farkas, the PCRCP manager, and I just wanted to respond both to the last two comments. First, I did want to recognize about Clackamas County. We do actually have a case manager there that is on an hourly contract to do case manager work. And then with regard to David Hocraffer's comment, case managers are available through the NRE process for criminal clients as well. So, that is a resource, it's something that attorneys can request as well.

Executive Director Borg:

The only other thing that I would add to that comment is that there was a presentation several years ago to the legislature that was, I think, facilitated through my predecessor, Nancy Cozine, at the agency, where they brought out — and I apologize for forgetting his name right now — but who'd been the former director of Kentucky's public defense system and talked about social workers at public defender offices.

And based on the research, I completely agree. If I could control everything, and I don't control everything, I would say that the first dollars and new dollars should be spent on social workers at public defender offices and in the public defense system, available to attorneys. Because the evidence is beyond doubt that that would be the most effective way to help clients improve their situation. So much so in Kentucky that a fairly conservative legislature doubled down and invested in social workers for that. We did not. We've made that presentation but not been able to convince the legislature of that, to make that an effective part of it.

But multidisciplinary representation is really where we need to go in the future and I think we have to continue to make the case. PCRCP case managers are an important part of that, but — and not to...I'm probably going to get a bunch of negative comments back on this — but it's our community that has to change the practice. Lawyers have to decide that that is important and then start utilizing the idea of what some people refer to as "holistic defense," I prefer to call it "interdisciplinary defense" now. But they need to incorporate that and that's going to be a change in practice. So, it is absolutely something that's important to me and important to the staff and that we will be working on and continuing to make the case that we need to have social workers as an integral part of both criminal and juvenile representation.

Chair Per Ramfjord: The only thing I might add to that is that it would be a good thing if there were some way in which staff could think about developing some model for providing evidence to support that conclusion to the legislature. Whether it's part of a case tracking that we ultimately do, whether it's on a county-by-county basis where we try to model this. I think that anything that we could do to actually show the effects of this.

Because I was at the presentation that the former director of the Public Defense Services in Kentucky gave and it was incredibly compelling. And so I think that there's a lot to be done with that and I just think that showing some imagination on how we could actually model that or get evidence for that would be very, very valuable. Okay.

The last comment, actually not the last, Karen Stenard indicated that she agreed with the concerns expressed by Rebecca in Clackamas, "As I stated in my email and material, I'm running my juvenile group in line with a PCRCP contract. I'm looking at substantial cuts. I'm making about \$40,000 less per FTE than all of the counties surrounding me, despite the fact that Eugene has higher cost of living than those counties and the attorneys in my group are highly experienced. This doesn't seem to further the Commission goal of equity. I hope this can be recognized and addressed."

As I said earlier, I think we are mindful of this and we are working towards addressing it and we hope to do that. Another question from Eva Rippeteau, "Have there been efforts to ensure that public defense providers, staff, and attorneys are included in the state's list of essential employees?" I don't know the answer to that question. Is there anybody who can assist with that?

Executive Director Borg: I guess I'll take a stab. I don't know... I mean, that's been on my mind too, especially since the recent publications about anticipated priorities for vaccine distribution. And as I was looking at that last week, it occurred to me that I think we do need to start documenting to making the case because we know that the contractor providers are the ones that are being required to go to jail, they're being required to interact with clients. I mean, I'm not trying to diss on clients, I mean just generally, the public, they have to have certain interactions that are integral to representation and then of course, being in court.

And so it's been my intention, I don't know the exact path, but it's my intention and thoughts that I think we do have to make the case that public defenders are part of the legal system, part of the public safety system, and should be seen as essential employees just like, I'm sure, court staff will and law enforcement and other people. I think they're in the same position and to the extent that we can make that case, we're certainly going to assist in making that case.

Chair Per Ramfjord: All right, thank you. Then one — actually not quite — one other comment from Eva Rippeteau, "I mean, requesting case managers as an NRE, are providers able to maintain them as regular full-time employees to maintain consistency of services and support or are they contracted on a short-term limited duration basis?" And I assume Julie can answer this question. I would presume that as it stands right now, they would be on a short-term basis. Although obviously, if you have a specific case and you would want to have continuity of services on that case, there could be some effort to do that but I'll let others answer that more fully.

Julie Fetsch: Chair Ramfjord, this is Julie Fetsch. I think that Keren might be the one more in line to answer that question. Case managers are on NRE. We don't have any case managers as full-time employees, they're all subcontractors on that.

Keren Farkas: This is Keren Farkas, the PCRCP case manager, Chair Ramfjord. So, just to briefly answer. As Julie said, our PCRCP counties have contracted case managers that are primarily independent contractors aside from the few in-house ones in Multnomah. For all non-PCRCP counties, those requests are through NREs. And as Julie, I think, was about to say, it's similar to an investigator or an expert, there's a request for a specific amount of time. Attorneys can identify the case manager they want to work with but we will assign someone if they have someone in mind, but it's not an employee situation, it's another independent contractor we're paying through an NRE process.

Chair Per Ramfjord: Okay. And a related question to that is from Steve Gorham who's basically asking how many of these case managers have actually been requested on an NRE basis? What is the rate that's being used? I mean, he knows that we use mitigators which might be considered social workers in death penalty cases but he's just curious whether there's any available numbers on that. And Mary Goody asks a somewhat related question — does the Commission envision using social workers in place of mitigation specialists? How would this use of social workers dovetail with mitigation work?

And I think that we're going to get into a discussion, I will say, I think in the course of some of the pay issues later on, about how the role of mitigators is changing a little bit with the decline in the number of active death penalty cases in the state. But I don't know if anybody wants to try those, any answers on it in terms of numbers, do we have any information on that? Any sense of whether mitigators could be considered in that same role?

Executive Director Borg: I think that the numbers, rather than having somebody try to rush through something, I think that, and we get those questions all the time about different things, I think that we can treat Mr. Gorham's request as a public record request and get that information to him, certainly publish it out to the commissioners. But I'd rather that we try to get accurate numbers based upon reviewing our database rather than sort of guess at that right now.

And then in terms of the mitigator/social worker/case manager, I think that is an appropriate conversation to have in the future, I think that that's something we can look at. I did try to, over this last year, expand the type of cases that we would use mitigators on, particularly in juvenile remand cases, because I think that the work is very similar to the type of information you're gathering.

But it's still a work in progress, because mitigators, a lot of the case managers we have are people who worked for DHS, worked for other social service agencies, and they've been particularly working with families and on the issue of sort of social welfare placement that I think is different than the mitigation work that, say, you'd been doing with a death penalty case. And so I think those are things that we can see if it's appropriate to do that and we can certainly look at that, but I don't know that it's just an immediate flip the switch and they're over there, I think that's something that we have to discuss and look at. And we are discussing within our NRE group, to look at what are — beyond death penalty — what are appropriate cases for mitigation, because I think there are appropriate cases for mitigation where that can be effective.

Chair Per Ramfjord: Okay. And then Mr. Gorham also asked whether you can include the rate charged or paid for those case managers. Finally, Mr. Hocraffer comments that regardless of the level of compensation or contract, full caseloads, COLA adjustments year over year should be built in. Can this be part of the discussion? Obviously, we think about ways in which we can try to deal with that. We are constrained in part by our budget and how this works. But we obviously, I think, work on trying to get funding that is appropriate for providers. So, I think that with that, that concludes the comments that were open.

Kaysea Dahlstrom: Per, this is Kaysea again. Kristen had a question she wanted to include before we go to our short break.

Chair Per Ramfjord: Okay, sounds good, go ahead.

Commissioner Bell: So, this is also sort of transitioning to our conversation about data management systems. But I'm curious when these contracts go out whether there are any provisions of the contract that indicate to providers that they'll be required to input various performance measures that would then be kept on a data system. I know that's something that we had talked about in the past, that offering data like that would not push into the classification of an employee, would respect that contractor line, but would still give the agency the ability to oversee and have some more transparency about what those performance metrics look like.

Executive Director Borg: So, that is a perfect segue into the next presentation because what we have — and you'll hear what started as a replacement for a financial system has evolved into a case management financial system. And it is my hope in

discussion that we've had, but this is what the next step is is really getting the business requirements for that system in, is that this ultimately would be a system available to providers to use and then from that, we would be able to generate information that would help us understand performance measures.

We also have been working with the Judicial Department to get information in terms of dashboards, like what actual caseloads are, what time to trial is. We're going to have to make some adjustments to this because of stuff where OJD is at and they're going to be able to give us data and we have to do the analysis. But we're already in discussions on looking at what can we get. Now, I want to manage people's expectations. Because we're talking about a system where we don't have a unified case management system, we're not coming in with large increases in money.

I want to be clear — we're not going to providers and saying, like, "You need to start making these reports right away," but this is certainly an integral part of it and why we're doing the case management as well as financial system is so that we can establish those and gather information in the future to understand outcomes, performance, and providers that way, and that will be...

Commissioner Bell: So, sir...

Executive Director Borg: ...you'll see that... Go ahead. I'm sorry.

Commissioner Bell: I can ask my question more succinctly. Will provision of data back to the agency be part of the contract?

Executive Director Borg: On a very basic level, about — and Eric Deitrick, I see, just popped on, he may have some specifics on that — but on a very basic level, it's not like we're going to be able to say in there like, "Track outcomes to clients," or something ultimately I think we would want. But Eric, what was amended on the contracts on that?

Eric Deitrick: Sure, Chair Ramfjord, Vice Chair Welch, and Commissioner Bell, it's already a part of the contract that all contractors have to respond to reasonable requests for data. And that's been elaborated a little more for the next contracting cycle where we will be requiring providers to provide some basic caseload reports monthly of the cases they opened that month. I think we need to be realistic in terms of getting data from providers, that we are going to have to wade into it reasonably without a case management system. The software we're currently working with our IT Department to get these monthly caseload reports is helpful, but it's also somewhat limited in the case management system.

But in terms of your question, Commissioner Bell, that is already a contract term, one that will probably be elaborated on in more detail in further

contracts. But it's already an expectation that they provide us information in response to our requests. The challenge for us is what are we going to be able to package up and deliver? What can we expect in terms of data from providers right now?

Commissioner Bell: Thanks.

Chair Per Ramfjord: Okay. Why don't we go ahead then and take a five-minute break or so? Why don't we start at 11:35 again, if that would work. All right, great.

[Silence 01:27:31 to 01:37:26]

Chair Per Ramfjord: Kaysea, are you on?

Kaysea Dahlstrom: Yes, I am.

Chair Per Ramfjord: I think we can get started again whenever you're...

Kaysea Dahlstrom: All right, Per, you're good to go.

Chair Per Ramfjord: All right. Why don't we get started again? We are going to move on to discussion of the IT update, the new financial and case management system, and we have a bunch of people up, starting with Jim Conlin. Why don't we go ahead and get started with that and the rest of the crew?

Jim Conlin: Good morning, this is Jim Conlin. Kaysea is driving the slideshow for me. Chair Ramfjord, Vice Chair Welch, Commission members. For the record, Jim Conlin, Chief Information Officer for the Office of Public Defense and in the room with me is Bryant Baehr, Chief Information Officer for Oregon Judicial Department. Next slide. So, a little background on how we arrived where we are today. The end of the last full legislative session in 2019 left the PDSC and OPDS with a budget note on procuring a financial management system and acquiring the resources to do that. About August timeframe of 2019, I was approached by Executive Director Borg and members of the OPDS team that were trying to work on the project for some guidance. OJD's Technology Department has provided technology services in a very limited fashion to OPDS, essentially since its inception, and that included email, network access, and some very minimal support.

After the approach to work on the project, OPDS and OJD started to engage in some discussions about how best to accomplish that. And through discussions with Brant Baehr, myself, Executive Director Borg, and State Court Administrator Nancy Cozine, we came to the agreement that we felt that it would be best if OJD and OPDS rewrote their support contract to have the Technology Department of the Judicial Department take over 100% support of the IT for the Office of Public Defense. That occurred in January, January 1st of 2020, for that transition. And with that, the Judicial Department's Technology Department took over all of the IT management

for Office of Public Defense. That also brings us into compliance with the budget note that required the project management services, business analyst, and to develop the initiating documents for a project. Next slide.

So, in the contract, the project team includes myself, Brandi Meyer, and Crystal Stiles from the Judicial Department as full-time, 100% dedicated to the OPDS project for a financial and case management system. About a month and a half, two months ago, OPDS also brought on a policy analyst, Kimber Sexton, who is a team member of the project to work on the business processes and policies. But the project team's purpose is to move forward with the financial and case management project in a way that follows project management guidelines and meets the goals that have been laid out by the budget note and the Legislative Fiscal Office which include what's on the screen. I'm not going to read slides to you, I know that I hate that. If you have questions, please ask. Next slide.

To date, from January to now this year, the Judicial Department technology team has accomplished quite a few objectives for the Office of Public Defense, the first being the initiation documents for developing and purchasing a financial and case management system. That is the documentation that you received in your package last week with the business case, the scope, and the governance plan.

Along with that, the Judicial Department Technology Division has also delivered a migration to a separate domain for the Office of Public Defense, which helps to separate our networks apart, since we do host all of the OPDS services and IT functions. We've migrated them off of the Lotus Notes/Mail platform into a full Microsoft 365 Office environment. We, because of COVID, rapidly moved into utilizing the Teams product which is what has made all of these live events possible. We're bringing over all of our IT and security policies to pair up with the security posture that the agency needs to protect its data and its systems. We've also started creation of a lot of new online forms for the agency. Next slide.

In addition to the project team, OPDS picked up the services from OJD on the new contract, from the Help Desk, Desktop, EISO is actually Enterprise Information Security Office, Network, Server, and Web Teams — so, they've picked up about the equivalent of 15 to 20 full-time employees on the technology side with the effort that we're putting into modernizing what OPDS has. Next slide. So, the next slide after this is a brief update of the background on Oregon Judicial Department projects and that speaks to the qualifications that the legislature was looking for when it asked OPDS to acquire project management services and business analysts that have worked on projects of this nature.

And so over the course of the last seven years, we have accomplished bringing eCourt to the courts which replaced the old OJIN system with the Odyssey product and along with that, all of the items underneath the eCourt

case were individual elements that were brought along with that. We also, in conjunction with the Criminal Justice Commission, brought on and took over the Specialty Court Management System over the last year for Specialty and Drug Courts.

We've also installed a complete VOIP system separate from what the Executive Branch did for the judicial side and are managing part of the VOIP system for OPDS. There's quite a few other projects that OJD has actually taken on themselves internally that are not on here. But it's just been a constant movement to improve our posture security-wise, Office email-wise, and so forth. Next slide.

So, one of the items that was brought up at a meeting that Executive Director Borg has talked about and is one of our requirements is a Stage Gate process. And illustrated is the Office of the State CIO Stage Gate process. The project we're working on, Stage Gate will be guided by the Legislative Fiscal Office IT analyst that we have, Sean McSpaden, and our budget analyst, Gregory. But these are the stages that are required for us to move our project documentation, Requests for Proposals, and actual project planning and implementation through in order to comply with our LFO requirements and to follow good project guidelines. Next slide. So, our project and goal objectives. Next slide.

You all received the package with the business case, governance plan, and so forth. Included in that was the goals and outcomes sheet for the project. This is a high-level look at what we hope to accomplish in providing a financial and case management system to the Office of Public Defense Services. This is not the complete list. We are starting in on the requirements' deep dive for the complete listing and need for goals and outcomes. In the Judicial Department's eCourt project there was almost 2700 discrete requirements that had to be met. I don't think we're going to have that many but I know that there's going to be a lot more than is in this outcome and goals sheet. Next slide.

To move into the business processes and business strategies, we can go ahead and move to the next slide. Our intent is to work on the current business processes that OPDS uses to process all of the information that the PSA provides and that the providers request in terms of nonroutine expenses, standard payments, and how all of that is accomplished. Right now, it is accomplished through a series of very complicated spreadsheets, forms, some Access databases, all of which are old, outdated technology. And we want to replace those with streamlined processes that will give the agency a much more efficient process in terms of handling the requests and the information input from providers and from staff.

To help support that, we are implementing a change management program along with the project management to help all staff and members that will be working with OPDS to have a full awareness of what the project is, what

it covers, what its scope is, and how that affects each individual that will be working in this project and in the new system. Have organizational support built in and probably in the scheme of things, the actual technology replacement is maybe 30% of what the project is. The rest of it is all people and business process. Next slide.

Simple project benefits — improved access, fewer processes that are manual, and much improved reporting which is what one of the primary drivers is from the legislative assembly and also out of the Sixth Amendment Report and the Commission's own Strategic Plan. The ability to report accurate and good numbers out of what the work that is being done has done. Next slide. I mentioned change management. The process for our change management is to drive the adoption and usage of the technological solution that will be put in place. Doing that means communicating with all the staff members and all of the stakeholders in a way that they have the understanding and knowledge of what is being done and why for the process and the project to be successful. Next slide.

Our next steps — we've received preliminary word back from LFO that they are satisfied with the work that has been done so far. We need to discuss numbers with them on a little bit more in-depth basis and also talk the technology pieces with the IT analyst a bit more before getting a QA vendor onboard. That's one of the requirements that is from the Fiscal Office in terms of the IT analyst request and also Stage Gate, is to have an external QA vendor watch the program, gather the detailed requirements, and move forward with trying to procure a service from a vendor. Next slide. Any questions? I know I went through that a little bit fast, I was just trying to make up for a little bit of the time lost on the earlier discussion and to give more time to discuss the business case, the scope, and so forth.

Executive Director Borg: Jim, this is Lane. Before you finish, could you just do a brief overview of your team? Because I know a lot of them are on as available for question answering, but I'd like to give the Commission and the attendees of how big your team is on this.

Jim Conlin: Absolutely. So, the direct project team is myself, Brandi Meyers, Crystal Stiles — those are the OJD employees. And Kimber Sexton from the Office of Public Defense Services, she was just hired about a month and a half ago as the policy analyst for the project. And then indirectly, I have the full support from the OJD Technology Department CIO, Bryant, who is in the room with me. Business operations manager, Tiffany Quintero, and a business writer, Cheryl Fowler. They're all working on the project with us to produce the documentation, the planning, and execution of the process.

Along with that, we are going to need a lot of time from the staff members that we deem are... Well, for one, the managers of each section of OPDS and the subject matter experts in each area that we're trying to basically modernize with the new system. The rest of the ETSD staff is support role

and just general technology, such as our desktop support, network support, information security, web team, and so forth. Did that answer it okay, Lane?

Chair Per Ramfjord: Great. That was very helpful. Do members of the Commission have questions or comments? Commissioner Ludwig?

Commissioner Ludwig: I have probably eight questions. So, [Laughs] just to warn you. I'll try to get through all of them in one session with you. So, the thing that I'm very interested in that I think... By the way, I should say I appreciate you giving all this information and all the report that you included in our materials, that was helpful. But the one thing I'm not seeing here is a completion date and so I'd like to know, at this point, what's your estimate of the expected completion date?

Jim Conlin: So, our estimate of the expected completion date of implementation and complete use by OPDS and potentially some local providers in the area would be by the end of the next session, so 2023.

Commissioner Ludwig: The end of 2023?

Jim Conlin: The end of the next fiscal budget session, so mid-2023.

Commissioner Ludwig: Okay.

Jim Conlin: Approximately two years from now.

Commissioner Ludwig: Okay. And I know that you've been working on this from January until the present and so that's about 9 or 10 months now. It sounds like you've gotten pretty far in terms of looking at different possible vendors to provide kind of an off-the-shelf or kind of modified off-the-shelf product to help OPDS. Is that right?

Jim Conlin: Yes. So, we've had the opportunity to have some discussions with a couple of vendors, four to be exact, and they are probably the four vendors that will bid when we actually get the RFP out, and they all offer, for the most part, what we call COTS, a commercial off-the-shelf system. And our desire would be to live within the constraints of the actual system purchased unless there was something that we were required to do by law that they had to modify for us. The more modifications you make in a system, the quicker it breaks down and the more complex it is for them to actually produce and give you a working product.

Commissioner Ludwig: Okay. So, I'm curious and this may have been buried in the materials, there was a lot of data in there, but are you contemplating a system where the data is directly entered by the individual providers? And I'm talking about a system like the eVoucher system that's used in federal court, I don't know if you're familiar but...

Jim Conlin: Briefly.

Commissioner Ludwig: Okay. So, will providers be able to put in their own data personally?

Jim Conlin: So, actually, Director Borg and I have had this conversation. We hope that they want to enter their information into this system. This system, one of the requirements is that they will have to be able to put their information in. They can make requests for payment, they can see cases and so forth inside the system. So, we want a system that will support and provide that access to the providers.

Commissioner Ludwig: So, would you be willing to, I guess, have a conversation with the people who run the eVoucher system in federal court to better understand how that individual provider data input kind of drives the process and how that works?

Jim Conlin: Absolutely, I mean, more information is better.

Commissioner Ludwig: Okay. And this seems like a system that's going to affect literally every single indigent defense provider in the state. They're going to be interacting with a completely new system. But on the Steering Committee, there's nobody, no provider other than Brook Reinhard who works at a true public defender office. So, is there any plan or thought of including more of the constituents, especially the people who are going to be doing hourly billing, like the NRE providers and the hourly lawyers, in giving some input into the development or the choice of the off-the-shelf system that you buy? Maybe that's more a question for Wayne, but here you are.

Jim Conlin: I think I can answer, that's fine. Wayne and I have discussed that and we do want to bring more of these stakeholder providers in on the conversation. I did send out a survey to the provider list that was provided from the analyst to me and to be honest, only four people responded back out of about 30. So, engaging the stakeholders is top of our list and actually we had hoped to have been around the state and actually had town halls with most of the providers by now, but COVID got in the way. So, that got pushed to the side while we worked on the initiation documents of the project, and now we need to come back around and try to make the contact in a meaningful way with all of the providers to get them into the fold as far as knowledge of what is being proposed, what is being looked at, and how we would do this.

Commissioner Ludwig: So, is it possible for you to take some sort of, I guess, a snapshot presentation of each of the off-the-shelf products that you're considering and, for example, put it up on the OPDS website and make it available there for providers to comment on? Sort of a quick and dirty explanation of both the product and the difference between that and other products, just the ones that are under consideration.

Jim Conlin: So, that would be probably outside of the procurement rules that we need to follow, I probably shouldn't do that, and I don't have an actual demonstration from each of them anyway. The only thing I could give would be the name and product and people could go look them up but I can promise you that if you do that, you're not going to see much just looking at what they show on their website, they're going to want to give you a demo.

Commissioner Ludwig: Mm-hmm. I mean, the demo would be for people who are like the members of the public who are interfacing with the system, right? Like providers, the constituent?

Jim Conlin: Right.

Commissioner Ludwig: It wouldn't tell you much about the inner workings of the program, that's kind of your side of the column, right?

Jim Conlin: That would be correct.

Commissioner Ludwig: Okay. And then I guess my last — well, I should never promise a last question, I won't promise a last question but I think this is my last question. So, I'm a private sector lawyer and if I needed to upgrade my IT system, I would have picked something and implemented it in the time it took you to write this report. So, I feel super impatient about the idea that we started this almost a year ago and it's going to be yet two more years before we have something available to us.

And so I guess in two parts. First of all, is there any way to accelerate the project to make it go faster? And second question, you can answer them in whatever order you want, is there any reason why the Commission can't get an update on how things are going at each of our Commission meetings going forward? Not necessarily to the extent we've talked about it today but at least a little mini-update so that we understand if we're on track, if there are delays we can know what to plan for, etc., etc.

Jim Conlin: I will answer your second question first. I believe that Executive Director Borg plans on having an update to the Commission whenever the Commission meetings are up, and I will happily give an update as to where we are and what we're doing. Number two, speeding up the process partly depends on our movement through the Legislative Fiscal Office and our Stage Gate. If they're happy with what we're doing, if our external QA's happy with what we're doing, and we have a good RFP out, and the vendors respond, it may move a little faster.

But I can tell you that moving faster usually ends up with pain and mistakes that aren't contemplated when you really try to move faster. I think the Chief Information Officer from the Judicial Department wants to join the conversation here, this is Bryant Baehr.

Bryant Baehr:

Hi, good after...almost good afternoon, Bryant Baehr for the record, Chief Information Officer, OJD. I was the former Child Court Administrator for Clatsop County. Commissioner Ludwig, I appreciate your comment on speeding up the process. Oregon itself is generally a risk-adverse state as it relates to investing into technology projects. And so the Stage Gate that's identified by LFO includes they want a strong business case, they want to understand what they're going to get for their money, that's the outcomes document that you saw. They want strong requirements, as Jim mentioned. We had over 2600 in the Oregon eCourt Program, I don't envision it's going to be that big.

But the state government is designed to move much slower than private sector. And I can also say I did 10 years plus private sector and I understand about going to Best Buy and buying what you need and installing it versus it can seem like a long process through the state side of things. Our goal was to produce a business case that was bulletproof, is probably the best word for it, that was well-put together, that wasn't rushed, that addressed as many issues as we could come up with that had a quick identifiable goals and outcomes so they knew what they would be getting when they'd give OPDS the money.

And as Jim said, it sounds like the initial reactions back are very positive. Jim and Executive Director Borg are working on setting up for future meetings with the Legislative Fiscal Office. Part of this is driven by money, they have to give you the money to do the project, and part of it is driven by managing risk. And so that's where Jim and the team come in, and then my team supports that. So, I can definitely understand the desire to move faster. There is a desire on our end to get this implemented sooner rather than later. We're just working through the processes to build up that support.

Commissioner Ludwig:

Thank you very much. And I had one follow-up question, I think. Okay, two follow-up questions. And I don't know if this is a question for you, Mr. Conlin, but since you're here. If we're going to have to wait two years for this new system to come online, is there any interim plan for some sort of stopgap that will address all these major problems we're having with paying NREs in a timely fashion? Because I and all the other commissioners have gotten something like a dozen letters in the last three weeks telling us that payments have gone from turning around in the space of 5 days to being over 45 days from submission to payment. And so are we going to have to wait two years to have an efficient solution to that problem or is there something that could be done in the meantime?

And then my second question, just so I can get it all out, and then I swear I'll Mute myself. If there's something that the commissioners or the constituents of the organization can do to assist you in creating a process that is quick, quicker, but also effective and appropriate, not hasty, full of mistakes, but proceeding as quickly as it can, tell us what that might be. Whether it be writing to our legislators, communicating with the agency to

give feedback, tell us the things that we can do to be supportive to help you get through this process as well and as quickly as possible. Okay. I'm Muting myself.

Jim Conlin:

Okay. So, to answer your last question first again. The best thing that the Commission can do is to be aware and supportive and change champions for the project. So, whether that's working with your legislators or working with the constituents and providers, showing your support for the project and for what the outcome of the project is expected to be. That's probably the best thing the Commission can do. In terms of moving faster, we already are actually doing that in a number of ways.

Early on, I worked with Executive Director Borg to purchase a few interim products. One of them is called Nintex Forms and the OJD web team is actually building online forms to replace the old ones that are on the OPDS website that incorporate some workflow and can reduce the manual processes on the back end to get these things moved through. And that should also be able to be incorporated into a system once we get a system up and online. But we're already working through some of that and Kimber Sexton, the policy analyst, is also looking at the processes so that we can get these forms — she's looking at the NRE form at the moment — up and running on the website so that there can be a more streamlined process now while we are working our way to the end goal.

Commissioner Ludwig: Thank you.

Commissioner Solomon: I have a question for Jim.

Chair Per Ramfjord: Yeah, I just want to make one quick comment. I mean, I think it's important to bear in mind for those of you who don't recall this. The whole Oracle software debacle for the Oregon Healthcare Program, and I think that has made the state and the legislature in particular very, very scrupulous about how it does these things. So, I think that contributes to the process, I just think it's worth mentioning. So, go ahead, whoever, Paul, did you have a question?

Commissioner Solomon: Yeah, yeah. Thanks. Jim, I've got a question and forgive me if I missed this because I had to rush out and get some food that was delivered for, like, one minute. But there was a memo in our packet about the DEI project and I don't know if you covered that at all in your presentation. But my question is, this is something I'm very interested in, and I hope that as you begin to collect more data that we get regular reports on this work because I think it is critically important.

And one of the things that I guess I have a question about is I recently saw a report that DOC did on the overrepresentation of people of color in the state prison system. They're less than 2% of the population in the state, 10% of the state prison population roughly. But they also took a look at

workforce and what percentage of staff in DOC were people of color and it was very, very small. So, we need a system that looks like the people that we're serving and representing and I'm wondering if that is data that we're tracking as well. How many lawyers of color do we have in the system and what are we doing to create a pipeline, workforce development, for people of color to work in indigent defense? And maybe this is a question for Lane, I just want to throw that out there.

Jim Conlin: My initial reaction to that would be we did not contemplate tracking the race, ethnicity, or anything of the attorneys. Although I don't know why that would be any more difficult than tracking them of the people that we are representing. So, that's a question that we could certainly explore but in the initial assessment and the memo, I don't think we contemplated that from the attorney viewpoint.

Executive Director Borg: And just to add to that, Commissioner Solomon. The agency has periodically requested that information of providers. Not just for attorneys but for the entire staff, just tell us what the makeup of your office is because it's more than just attorneys that provide service delivery to clients. And without getting into great detail about that, we did hear back and have heard back, I should say the agency, that in some cases in non-urban areas, to revisit an old term, it's been challenging to attract and recruit. I had some very good success before coming down to the agency at Metropolitan Public Defenders getting a fairly diverse recruiting of attorney staff.

But it is something that certainly we can look at. Jim's right, we haven't built that in as a component but that's kind of the stage we're at. And so that would be an example of something to say that's what we want to have in there then that would be a business requirement that we would have on there in terms of reporting information about the staff that are delivering the service. That'd just be another component just like education or background or experience, and I think that would be something we could do.

Commissioner Hardin: I have a question. Excuse me, Paul, did you want to go first?

Commissioner Solomon: Nope, go ahead.

Commissioner Hardin: So, before I ask, the Request for Proposal, as I understand it, will define the scope of the work and what are the expectations for what the new financial and case management system is supposed to perform, so it's a very critical document. So, my first question is what do you see the timing of that Request for Proposal being issued? When do you expect, right now, that you would issue that?

Jim Conlin: Based on where we are today, Commissioner Hardin, I would say that if we have agreement with the IT analyst at LFO and our budget analyst and work

with our Procurement Department, we could probably have an RFP out by the end of first quarter of next year.

Commissioner Hardin: Okay, thank you. So, the new financial and case management system potentially is going to have profound impact on what OPDS does, how it oversees representation, the basis of payments, so it's not just a technical issue but it's also a substantive issue. It will affect how well OPDS can evaluate what attorneys are doing, how well it can audit and review what they're doing, and how payments are made. And I'll just offer one... So, what I'm getting at is I think we, as a Commission, will not want to get deep into the weeds of all the technical requirements, but I think we will want to know what kinds of tasks that this system will and will not be able to perform as reflected in the RFP.

So, one little concrete example. Supposing the Commission decided in the future it might want to have payments to providers based on hours of work. Then we might want to have a system that would have the capability of inputting hours of work whereby contractors would directly input hours of work and then that would be reflected by the system which could then generate appropriate payments. So, what I'm getting at is I'd like us to have some meaningful input before the process gets too far on what is the vision for what this new system will be able to do for us and what it won't be able to do for us.

Jim Conlin: I think that's obtainable. For example, it would be table-driven, so you would be able to say an hourly person is making this much money per hour, and when they submit their claim, it would look to that table to see what that was supposed to be and it would calculate it and move it on. If you had a full-time equivalent that was salaried, it would be marked as salaried and it would pull the salary out of the appropriate table and that would be the payment. So, I think the type of nuances that you're talking about, Commissioner Hardin, would be encompassed in the system and absolutely would want to make sure that you have the upfront knowledge of what would be and what would not be incorporated in the system. The project scope helps determine some of that.

Commissioner Hardin: Yeah, so [Distortion 02:17:44] with a couple of more examples. Supposing we would like to have the capacity to, for example, look at contractors or look at attorneys to see how many, the relative proportion of pleas versus trials. Or if it did turn out to be hourly, how it's breaking down by attorney within a particular timeframe, by a firm within a particular timeframe. If that's our direction, then we would want to feel assured that the system would have the capability of generating that kind of information.

Jim Conlin: I think that that would be more than capable. If you look at this from a very basic point of view, almost any system that we would acquire is going to be based on a database. And as long as we collect the data elements necessary to report on, we can make reports that are standard and also ad hoc to

deliver the information that you're looking for. Because really, the point that we're at is that we need a system that is collecting all of the information we need, or all the data we need, to provide us with real information, not just little data sets.

Commissioner Hardin: And so...

Executive Director Borg: And let me... Commission Hardin, I just want to add, I want to clarify. We already have hourly. It's not maybe as big and as robust as Commissioner Ludwig would have, but we have lawyers that bill hourly. We have public employees in the Appellate Division and we have contractors. So...

Commissioner Hardin: My point is much more general than that. It's about making sure that the system will have the capacities that we hope that it will have. You mentioned data elements so I'm curious — when in the process, is that something the RFP is going to include, what expected data elements the system would have? And the kinds of performance reports the system would be capable of generating?

Jim Conlin: So, yes. Right now, that is the stage we're at while we are waiting for deeper review from LFO in terms of our business case and our initiation documents. We are currently working on in-depth data requirements, operational requirements, that will help us to formulate the RFP in a way that a vendor can respond to the various requirements. There's going to be required elements, there'll be desired elements. And so we'll make as clear as possible the required elements that need to be collected in order for the system to be able to produce reports. As I stated, some will be standard reports that are already identified that need to be done on a routine basis, and the ability for the analyst to be able to reach in and create ad hoc reports on very specific information when requests are made for that.

Commissioner Hardin: So, it sounds like from what you're saying, since you're already looking at data elements, that this would be a good time for people to provide input on what functions they hope this system will have the capacity of performing so that you'd be able to make sure that you would have sufficiently precise and detailed data elements that could make those functions possible.

Jim Conlin: Correct.

Commissioner Hardin: Okay. So, I think the onus, there's some onus on us as a Commission. If we have priorities or suggestions about what we hope this expensive system that we will eventually be asked to approve, will have the capacity to do, we should be thinking about that so that we can make our views known.

Jim Conlin: Correct. And in terms of that, the easiest way is to provide examples of requirements that you would want, such as a specific report or some form of listing or other items like that, and then we can determine from that data

elements necessary. Back when Commissioner Ludwig had some questions, one of the things that came to mind as far as being able to track things or to be able to input things, not only do we expect the system to be able to allow the providers to input data but we also expect to get data extracts from the court system that can be put into the system and that will actually validate what the providers are saying.

Commissioner Hardin: Yeah. So, just one more example and then I'll stop — kinds of activities of attorneys. In the PCRE program, there's a specific requirement that attorneys spend a certain amount of time, a certain proportion of their time, in direct work with clients. I think there may be a number of other kinds of activities that would be important in terms of quality to have a handle on. So, that's something I hope that people can think about a little bit. Are there measures, as an experienced criminal defense attorney, are there activities or measures that would be useful, that would better enable OPDS to track and evaluate quality of work?

Jim Conlin: Correct. So, we are going to gather that from as many sources as we can so that when we put the RFP out, we have these requirements in there for the system to be able to collect the information and then produce reports from that information.

Commissioner Hardin: Okay, thanks very much.

Jim Conlin: Other questions?

Chair Per Ramfjord: Okay. Hearing none, thank you very much for the presentation, it's very helpful and this is an exciting thing. I can recall when I first joined the Commission, hearing about the nature of the Access databases and how they were being used sent shivers of horror up and down my spine, I'm glad to see that we're finally getting past that.

Kaysea Dahlstrom: Per, this is Kaysea. We do have a comment and question that has been published in the Q&A that is relevant if you want to read those into the record.

Chair Per Ramfjord: Okay, sure, thank you very much for that. So, the comment/question is from Brook Reinhard, "This project has been envisioned in some way and a nascent promise for as long as I've been a public defender. I'm really appreciative with the work Jim and his team is doing and I'm absolutely hoping we can get more provider input as we go forward. From my perspective, the ability to have a case management system that would talk directly to OEI and also make monthly reconciling with OPDS automatic would be fantastic." So, that's more in line of a comment. I don't know whether you want to comment on the OEI connection.

Jim Conlin: So, I can make a comment about OEI, that's the Oregon eCourt Information System, that's the public side of the system and that's what a

lot of providers and also OPDS rely on right now. And that is where I was talking to Commissioner Hardin about the expected import of information from Odyssey from the courts would really benefit the system. Because then we would have a lot of this information in our own system instead of having to go look in another system for that information. Such as hearings, proceedings, time spent on doing things, that can all be imported and brought into the system rather than have to look in a separate system. So, yes, we hope to have that online.

Chair Per Ramfjord: Okay, great. The other question that was raised is what is the timeline for implementation of the improved NRE forms that Mr. Conlin mentioned?

Jim Conlin: So, since we just started on that, I'm going to say it's going to be a month or two but our web team is working with Kimber Sexton and the analysts team to work towards what that form needs to contain and look like and what the workflow on that form would be. So, it's short term in terms of the work we do but it probably feels like a little ways out for providers wanting to use it.

Commissioner Bell: And I have one additional question, this is Commissioner Bell, building on the questions that were asked by the other commissioners. Particularly the last question about providing lists of data points that we want to make sure this new system will be able to capture. What is our goal or our timeline for providing those with you? And I guess this a question for just the Commission generally as well. Is this something that we plan to discuss at the retreat and if so, is OPDS planning to give a sort of, "Here's our sort of brainstormed list. Let's have a discussion and see if there are others we need to add or questions we should be asking." What's our plan for getting that list to the parties that need it?

Jim Conlin: So, from the project side, we are currently just starting into the in-depth requirements gathering so I don't want to say definitively, "It needs to be by X time." But I would say that we will need the requirements nailed down and done by the end of January if we want to be able to produce an RFP by the end of March. Because they're going to need to be incorporated into the RFP, so we will be working fast and furious on the requirements over the next two to three months. Did that answer your question, Commissioner Bell?

Commissioner Bell: Yes, that did for when we need it. And then I'm curious how we're going to use the time that we have to get it to you by the end of January, so that's a question for the other folks on the call here.

Commissioner Hardin: It sounds like we need to address it sooner rather than later, it is the Commission.

Executive Director Borg: I agree and that certainly will be a priority of getting that information out. I'm not trying to make excuses but we literally just heard back from LFO about two weeks ago that they had given preliminary... Well, that their

indication was that the only questions they had had to do with some financial estimates that were included in the report. So, we're taking that as a good sign that they're going to let us go forward. Just to go back, and this is a frustration, we didn't cover this in the presentation. But the scope of what we're talking about, if we're talking about a \$10, \$11 million project, this is not huge compared to other projects that they have bought but it's still the process we have to go through.

And that can be both a blessing and a curse because on the one hand, this isn't like it's such a big project that everybody in the state's going to drop everything to get this done. On the other hand, I don't think ultimately that the cost is going to be the break point. So, we do have it on there, it is something that we know. We're just starting that process of gathering all the people together to start doing the requirements because I am trying to be very respectful of the Stage Gate process because I don't want to be kicked out of it because we didn't cross one "T" or dot one "I" on that because it is a long cumbersome process.

Chair Per Ramfjord: Well, is this something that we could profitably discuss at the December meeting? At least get some sense of where things are and whether we can provide any relevant input there?

Executive Director Borg: Absolutely. And I think that also it would be appropriate, like commissions can have subcommittees, I mean, I think all the commissioners will want to see it and be weighing in on it. But if there are commissioners that are particularly interested in that, then we can make sure they're, just like any other stakeholder user group, be included in those meetings and we're in the process of just getting that stuff set up now.

Chair Per Ramfjord: Yeah. I have to say that at some level, I like that even better. I'm a little concerned about the unwieldiness of the entire Commission trying to direct things like this, so I think that having commissioners who are interested in the process participate in some of the interim meetings would be a more profitable and effective way of getting input. With that, I would say that those of you who are interested, please contact Executive Director Borg and see if we can't make that arrangement, okay? All right. Anything else on this topic? Okay, hearing nothing, thank you again, Jim, really appreciate the update, very valuable and very informative so thank you.

Jim Conlin: Thank you.

Executive Director Borg: Thanks, Jim.

Chair Per Ramfjord: Now we go on to the next subject of payments and I do want to mention here that we have received a lot of correspondence on the subject. The commissioners have received correspondence from James Comstock, from Bernie Brown, from Ellis Gute [Phonetic 02:33:05], from Laura Rattal [Phonetic 02:33:06], from Mary Goody, from Ellen Rogers, even most

recently. There's been some requests to read all this out loud during the meeting. I think it would take an inordinate amount of time for us to do that, but I want to assure you that we have read those comments and we are taking them into account and they are part of the record ultimately for purposes of the meeting. So, with that, I would like to go ahead and start off the discussion on this and why don't I start with Executive Director Borg giving an update on where we are.

Executive Director Borg: So, thank you, Chair Ramfjord and Commission members. I'm going to start off with some overview comments but particularly you're going to be hearing information specifically that's going on with AP from Julie Fetsch and you will also be hearing from Eric Deitrick about some of the processes moving forward. But there's a couple of things I'd want to start with, and I have read all of the letters that have been submitted and comments. But there's two different things that are happening that I have to be careful not to conflate because they're separate issues.

One has to do with mitigators. I understand that they would say, and I'll probably get comments in right away saying that, "We're going to be in the NRE process and so this is going to affect us." But there's the issue of what is happening within the death penalty community writ large and how that is changing their world and then there is the issue of the processing of payments for providers funded through the NRE process generally and there are different issues going on.

Let me address the death penalty community first because that's affecting a lot of the mitigators. The reality is that 1013, the reforms to death penalty, have been, I believe, more successful than might have been contemplated before. Going back a year and a half or two years ago, we had regularly about 50 to 55 cases in process, in various processes from arraignment through State-funded post-conviction relief and we were seeing about 15 to 20 new cases a year coming into the system.

And because the Commission had adopted, in 2008 or 2009, standards, adopted the ABA standards on death penalty defense, meaning two attorneys that are death penalty-qualified, two mitigators, that that became sort of the justification, the NRE if you would, the nonroutine expense application, by just saying, "Look in Odyssey, it's a death penalty case." So, they get two attorneys, they get two mitigators, and these cases took a long time on average to do. So, we didn't need other justification and it made sense over time to do contracts with mitigators and of course, contracts with the attorneys.

The death penalty reform 1013, we have not had a new death penalty case in a year in this state and of all the cases that were pending, we have certainly less than 10. I believe it's more about 3 to 4 actual pending death penalty cases. There are some, if you go look in Odyssey, there are some that are still existing in Odyssey as death penalty but we know based upon

the fact pattern that they are murder in the first degree or murder in the second degree and we're working with OJD to get those records corrected.

But the reality is that whereas before I was spending, the agency was spending, about \$280,000 a week on defense for death penalty, that was just for the funded providers, not even other expenditures, and now we're spending really a fraction of that. It's not just COVID-related, it's because there are just a lot fewer death penalty cases out there. So, at some level, I think that we have to realize that we need less capacity than we had before in terms of death penalty mitigation and death penalty-qualified attorneys.

And that's a difficult reality to come to because that's what people have been doing as their livelihood. Now, I'm not going to say, "Oh, let's bring the death penalty back because we need to keep people employed." We shouldn't be doing that, we should be celebrating the fact that it's been a year. I mean, I don't think we have widespread lack of public safety in this state and it's been a year since we've had a new capital case filed. And so that's part of the reality of what is happening with that community. I think it was the responsible thing to say we can no longer fund them in the way that they were being funded before.

And so we did move both the mitigators and the attorneys to a pay as you go. They're still paid the same rate they were paid before but they're moving forward in terms of just billing their hours and submitting them and we pay them on that. And I understand that that's where COVID is having an effect, because it is harder. You can't get into a lot of jails and facilities as easily as you would before, and so there is a limitation on their being able to bill hours that way. We have tried to make mitigators available in other areas, I think it's appropriate in other than death penalty cases.

But that then changes the dynamic because in order for us to have an ability to pay them, there needs to be an NRE filed by an attorney. There needs to be an attorney request that says "For constitutional adequate representation, I need a mitigator doing so many hours." And that is the process then that authorizes payment. And we are audited on this. I think some of the comments may suggest that we're not or may question the veracity of that statement by us. But we are. Even to the point where in the audit that we're just in the process of completing for the fiscal year closing in June 2020, they've pulled specific NRE payments. They've looked at them and said, "What was the authorization?" They want to see that there's a link there, that there's something that says this is why you're allowed to pay for these services, and did you verify and check what the services were?

And they in fact, asked us specifically because this came up as an issue about why did we raise the non-contracted mitigators to the \$65 an hour. We were asked in a reverse way by the Secretary of State, why were we paying different amounts to what appeared to be the same line designation — mitigator. And we were able to say, "Well, we were doing that before

because there was contracts and non-contracts. Now, they're not and we, in fact, are paying everybody the \$65 an hour." That, Julie's going to report on what the fiscal impact of, that was a specific question by Commissioner Ludwig.

But I didn't think the right thing — in leveling payments — I didn't think it would be right to bring everybody down to 50, so that's why we chose instead to leave the people that had been contracted at 65 and then bring the others up to that. And the mitigators are a part of the NRE study process that Eric Deitrick's going to talk about, about trying to do it. Because the other reality we deal with mitigators is that while they are essential and important and they do great work, there's no degree in mitigation. We don't have a way to independently say, "This person is qualified to do this, and this person is qualified to do that, or not qualified to do this other." Everybody believes, and I'm not saying they're wrong about that, everybody believes that they know what good mitigation is or who's qualified to do that.

But the problem we face as an agency is there's no external objective criteria where we can say, "Well, this person is therefore at this level and justifies this payment." A mitigator, quite frankly, in our system currently is whoever an attorney says is a mitigator. Because in the NRE system, they submit a request saying, "I want so many hours for so-and-so to do mitigation," and there's no degree in mitigation, there's no certification by the State, there's nothing that says this person has these qualifications. So, it is literally what the attorney says is mitigation and then we review that. So, that's one of the dynamics is that we have a community that's transitioning because of changes in legislation and frankly, the reality that moving forward in the future, there's going to be a lot less of that work. And I'm going to say, and end on that part, that's a good thing. I'm not going to say it's a bad thing that we've got a lot less death penalty work out there.

The other thing is that — I'm sorry, I just want to look at my notes and make sure I covered this before Julie and Eric chime in — is that in doing this direction and making a decision on this, the thing that was important to me not only is trying to within the NRE process have a better definition, both of what do we think mitigation is and is there a way, in conjunction with talking to the providers in the community to define that. What are the appropriate cases in which we should be authorizing and encouraging the use of mitigation and mitigators?

Because despite the fact that no objective criteria, I do believe that is a valuable and important thing and can be effective in the representation of individuals charged with serious crime. So, that's going to be a challenge we have moving forward, is how do we do that. In terms of the payments — I'm now switching over to the other issue about the processing of payments, and Julie's going to give an update of what their processes are and where we stand on this — but the thing that I did want to say and I will own was

my direction on this, and I'm not sure it's always clearly understood, is that in the past, in the past of the agency prior to my coming to the agency, there was not a division between the financial payment system side and the authorization side for the work.

And that, I felt that that was a material weakness, it was a vulnerability to us and that you have to have separation between who is authorizing the work, that is who is saying now we're going to either let a contract or we're going to let this work go forward, and then who is authorizing the payment out once the work is done, and that's the Accounts Payable people. Now, I understand that that has perhaps driven more process and more formality to the system, but I will own that that was a decision I pushed because I believed that it was a financial vulnerability.

I believed that one of our paths forward to getting more money and resources from the legislature is to showing that we are responsible stewards of public money and that we take this seriously and that we want to spend the money wisely. And I'm not going to get into great detail about this right now, but through this process, I would say we have discovered billing practices that if not fraudulent are not acceptable. And I have been maybe not surprised but in some cases, the response to that within the provider community is, "Well, what do you mean? You've always let me do this."

And that is, to me, not an acceptable way. If the practice is bad, we have to reform that. But I also think that that was perhaps a product of a practice in the past where you didn't have the separation of authorization to get the money and then authorization to release the money. So, that I think is the higher overview reasons that I wanted to start with and then I think, Eric, are you going to go next in talking about that or is Julie? Either one.

Eric Deitrick:

I can go if you want, Lane. Chair Ramfjord, members of the Commission, Eric Deitrick again from the Office of Public Defense Services. I was asked to update on two things today. The first is the existence of the NRE workgroup, I think it's been covered a little bit today and I know I've talked about it in past meetings. So, we have put together a team of 16 people that are 8 attorneys and 8 non-attorneys, we've met three times so far. We're meeting about every three weeks on Friday afternoons to basically have a conversation with providers about how we're currently doing things and how we could do things better.

And I got that started but with the addition of Kimber Sexton to the team as well as our other policy analyst, Amanda, I mean, they've really taken over and are running with that. But we certainly understand, as Lane said, that equity doesn't require equality and we made the decision to change the rate for mitigators to one rate. That's because we don't have any other criteria. And we need to have criteria and we need to have the criteria for how we're going to pay people from that community, have input from that

community. And so I will expect going forward that we will define mitigation, set up standards and qualifications for what mitigators are and how they can advance from one step of case type to the next to earn more money. But again, we're right at the beginning of this process.

So, we will be meeting through the end of the year at least and I know we, at least at the next meeting, are going to be discussing some of those new Nintech forms that both Jim was talking about earlier for the NRE process. So, we do have a group of stakeholders that's meeting with regularity. The second thing I was asked to talk about was I think there was some discussion about travel time for psychologists. And frankly, this has been a part of my working portfolio since I joined the agency, which is psychological services for public defense clients regarding GEI or Aid and Assist.

I could take as deep a dive on this as you want to, but the bottom line is the decision to trim the travel time to half time was a business decision and again, I'm not sure this is the best forum to be discussing these kinds of business decisions. But since I was asked to, what I'd like to highlight is that you cannot separate travel time from the agency's perspective from the overall cost we are paying for psychological services statewide. In 2012, the average amount of time for a psychologist on a case was 10 to 12 hours, we're up to 20 hours now. So, in an eight-year period, we've seen about a 60% increase in the amount of time psychologists are requesting to spend per case. Back in 2012, the guideline rate was \$120 per hour. Right now, the median range we're paying is \$175 per hour.

And in the criminal legal system, if you have a situation where your clients, you doubt your client can Aid and Assist, there are two routes for psychologists to eval you. One is for the defense attorney to request their own and the second is for a contractor at the State Hospital to do the evaluation and right now, we're paying an hourly rate that's 40% higher than the State Hospital is paying for similar services. Just this biennium alone, we're 25% above what the legislatively adopted budget for the agency expected us to pay on psychological services.

So, there are true costs and I can't help but think where we just came out at the last meeting, we were talking about how we can route more money to attorneys. When you look at all of the predictable stakeholders OPDS funds, you're talking about attorneys, you're talking about investigators, mitigators, interpreters, transcriptionists, and psychologists. Psychologists — it's not even minimally close, they're so much closer to market rate than nearly everyone else within our system. Attorneys are still capped out at about \$105 per hour which is significantly below market rate.

So, at the same time these cost issues are happening, there's a statewide discussion going on about improving the State Hospital, improving the process in which evaluations occur. We have as an agency stepped up in

three counties — Washington County, Multnomah County, and Marion County — and created these rapid Aid and Assist dockets where we have psychologists kind of available with regularity and predictability to turn these evaluations around quickly.

That's the type of model we're looking to going forward. Instead what we have stumbled into — and this was not by agency design, this was attorney-driven — we have attorneys from Eastern Oregon and Southern Oregon requesting doctors from Portland to travel all over the state and we simply cannot afford to do that. And so I've been working with Doctors Millkey and Giten [Phonetic 02:52:22]. They're one of the providers that we work with the most but also they're on the Oregon State Hospital's Forensic Evaluation Team, those are the folks that do these evaluations, you have to be certified with the State Hospital to do these evaluations. They are trainers, they are the people who train other forensic evaluators around the state.

And they have wholeheartedly endorsed the concept of tele-evaluations as an appropriate method to do psychological evals on Aid and Assist cases. And I will admit, I was skeptical about it at first, I do not like people appearing by video in courtrooms. I think it's dehumanizing and I think part of going to court should be that physical process of being in court. But they have completely persuaded me on this. They presented at the University of Virginia a month ago on this and they are going to be training psychologists who do this work in Oregon, that this is the way, that there is no problem doing basic Aid and Assist evals in this manner.

I'm trying to think if there's any other issues related to the issue of travel time. And there's one, and it's COVID. So, we are currently working with the Sheriff's Association to make sure that they have appropriate stations set up in their facilities. Because they don't want folks coming into jails unnecessarily. And our psychologists, I don't think want to be going into COVID exposure environments if they do not have to. So, we are working with stakeholders to make this transition smooth so that we can do more work on these Aid and Assist evaluations virtually, like we're having this meeting.

And so I'm happy to answer any questions online or offline. If you ever want to talk to me about why we're making these decisions, feel free to give me a call. This was not a random thing done, we're really trying to control costs for psychological services, both generally and find ways to get through COVID in a way that's safe.

Chair Per Ramfjord:

Okay. Why don't we go ahead and Julie can talk a little bit. I know there's already comments coming in and we can address those in a moment. But Julie, why don't you go ahead?

Julie Fetsch:

Thank you, Chair Ramfjord, members of the Commission. For the record, this is Julie Fetsch, Budget and Finance Manager for OPDS, I'm here to give

you an update on the status of our Accounts Payable Division. As I reported at the last Commission meeting, September was a challenging month for everyone with the wildfire smoke event that closed both of Salem's OPDS offices for five days and disrupted the lives of our staffs and their families. This unprecedented event, on top of the challenges we already face due to the COVID pandemic, caused the agency to push up against the State's guidelines of 45 days to process non-contract payments.

I am happy to report just a few weeks later that we are currently at a 37-day turnaround, well below the State guidelines. This is completely due to the hard work of our professional Account Payable staff and their willingness to come in and work additional time on their weekends to get caught back up. We are still working towards our goal of 30-day turnaround, although 45 days remains the actual State guideline. With the recent addition of two more staff members and possibly some additional work over one more weekend, I'm confident we'll be able to meet that goal and maintain it in short order.

Just for information, the OPDS website does have an entire section dedicated to providing detailed information to providers and it includes an Accounts Payable page that's updated several times per week with current payment status information. Last month, I also noted several steps that we've taken to improve our Accounts Payable process and I want to take just a minute to give you a little more detail on one of those business processes. I believe it may help clarify some of the misinformation that's been reported recently.

When I came onboard eight months ago, it was clear that the biggest issue affecting Accounts Payable turnaround time was the fact that at least 60% of vendor invoices were being submitted with errors and missing documentation. With thousands of vouchers submitted every single month to AP, the staff was spending an inordinate amount of time identifying these errors and correcting the invoices on behalf of the vendors. This is a business practice that we have improved and that has cut back on the amount of turnaround time for the staff.

It's important to note that Accounts Payable staff work for the agency, not the vendors, and the responsibility is to ensure that a signed and certified payment request submitted by a vendor complies with State payment policies. The Accounts Payable staff can't just make changes to a vendor's personal or business invoice in order to make it compliant with a policy. The vendor's responsible for submitting a correct and complete invoice and they sign a statement certifying the information is true and accurate when they submit for reimbursement. If there are errors or omissions in their submissions, they are the ones who need to fix it.

To help facilitate this process in a timely manner, we implemented a pre-audit procedure where a high-level review of the vendor's invoice is

performed at the time that it's submitted for payment processing. If certain errors are identified, such as incorrect hourly rates, incorrect mileage rates, unsigned or incomplete NREs or fee statements, missing receipts, missing invoices, missing fee statements, it's returned to the vendor for correction at that time. At this point, it's up to the vendor on how long they take to correct and resubmit their payment. Most of the vendors resubmit that same day and often within just the next few days.

The 45-day payment process does not start until a correct and complete payment request is submitted and accepted by the agency. If after it's accepted, additional errors are found or additional information is required when the invoice is being coded and entered into the State's accounting system, or when the case information is being verified in the eCourt system, then AP staff contacts the vendor, requests the correction, and tells the vendor to return it directly to them to be processed as soon as the correction is made. Once again, the ball's back in the vendor's court and the payment request simply remains on hold with the responsible AP staffer until the response is received.

Once the vendor provides the required information, the payment process picks up right where it left off, the paperwork is finalized, and payment is released by the agency. The implementation of this business practice along with several others has increased the efficiency of the Accounts Payable process and also accurately realigned the responsibility of agency staff and vendors in the payment process. We will continue to review and improve our business practices, not only to ensure that we're in compliance with State accounting requirements, which we are audited on every year by the Secretary of State, but also to ensure that we're spending the limited funding we have in an accountable and cost-efficient manner.

We are a State agency spending taxpayer dollars and we must meet the State's requirements for spending those dollars before we can certify that an expenditure is properly payable with public defense funds. And last but not least, I will respond to Commissioner Ludwig's question, I'm just going to read her specific question back because the answer is very specific to that. She asked, she was responding to the rates for all mitigators, she understands they were recently changed. Her specific question was can you tell me the number of mitigators who got an increase and the anticipated financial impact? The increase was to the hourly mitigators versus the contract mitigators.

So, in the first 12 months of the current biennium, we paid 24 unique vendors a total of 67...155 hours [Phonetic 03:00:30] for non-contracted mitigation. The rate was about \$50 an hour for each one of those. If they performed the same 6,755 hours for the remaining 12 months of the biennium, the additional cost at the new rate would be \$101,000 for 12 months. And with that, I'll turn it back to you, Chair Ramfjord for any...

[Crosstalk 03:00:55]

Executive Director Borg: Just a second. Before we do that, Julie, one thing I want to clarify that you said but I want to make sure that they're hearing this is that in that 45 days, once we accept from and initial that [Phonetic 03:01:07], if we send it back to somebody, then that does not count, we can't control that time. The 45 days is not calendar, it's the days in which OPDS is responsible for the bill. In other words, it's in our court to process it. But there are situations, not a lot, but there are situations where we send something back for a clarification and the person might wait two, three, four weeks, a month, and it would be impossible for us, and I think not fair, frankly, to say, "Well, that counts in the 45 days," that you can then say, "Well, I'm not getting paid."

The other delay that I think there's a lot of confusion on is that we are hearing that attorneys are directing their providers — their investigators, mitigators, other people — to not submit bills until the case is over and that is not an OPDS requirement. If the attorney is doing that and the individual investigator or whoever is working for them acquiesces to that, that is between you and the attorney, we cannot control that, we have to process a bill once it's submitted.

The purpose of and the reason why there's been a lot of discussion in the letters about breaking down NREs is because under our current system — I hope the new system is better and it allows us to do it differently — but under the current system, think of an NRE allotment as like a voucher, it's a ticket. Once you submit it, then we pay up to the maximum amount of hours authorized on that but it might be less, we pay that. And then that is included in the system like a numbered voucher that was authorized for payment for work and then paid for once the request came in. So, we talked to this community and we went out and said, we had the idea of saying let's break those down into usable tickets — 10 hours, 20 hours, whatever it would be.

The intent of that was not to make it difficult for this community, it was to allow them to be able to bill in some kind of interim fashion before the case was over. They didn't get just one authorization for 100 or 200 hours and then have to wait a year or something like that. So, that was really the intent. Now, if that's a problem for people, we don't have to do that. That was not done for our convenience, it was done to be a resource, a way for providers to be able to get billing and submit that and still have authorization to keep working on the case that way.

So, those came out in the letters and I just wanted to give clarification on that. We are responsible for when it's submitted to us. If attorneys are telling them not to and that's what's driving up your payments on interest or other things. I'm sorry. The last thing is on fronted costs that we should have addressed. I know that it may feel cumbersome but there are ways in which you can get fronted, that we can work on getting it. There's the travel

agency, if people, they don't have to spend their own credit card to get travel agency and if it's at least State records. I don't think this is going to apply with private company records. But on State records, you can work with us on trying to get them. My sense is that a lot of the fronting of the money is because either the expediency of needing it right now or how that is going or a desire to get those records without going through contacting us and contacting the State travel agency. Anyway, that's just something I wanted to clarify for Julie.

Chair Per Ramfjord: Okay. I have a few questions but do other people, other commissioners have questions that they want to ask? Go ahead, Commissioner Ludwig, yes, and then Commissioner Solomon.

Commissioner Ludwig: Sure, sure. I have a couple of questions and I just want to make sure I'm clear about this because it sounds like what you are saying is that in response to all these many letters that we got from providers who've worked in the systems for decades, many of them, that to the extent that there's delay in payment, it is all attributable to the vendors who are submitting bills and receipts and whatnot with errors in them. It has nothing to do with delay on the part of OPDS. Is that what I understand?

Julie Fetsch: Thank you, Commissioner Ludwig.

Commissioner Ludwig: What was that?

Julie Fetsch: Commissioner Ludwig, I'll respond to that. What I'm saying is that we implemented a process because the vendors who were submitting invoices with errors were taking a lot of the time of the Accounts Payable staff to do it and the people who were submitting invoices without errors weren't getting paid, it was all in one big pot. So, we're trying to separate out, trying to educate the vendors who have issues with rates and different things like that, so that we can get the vendors who are not submitting with errors paid quicker and faster.

And it has made the system more efficient. You can consider it training for the vendors for them putting in their own information into the new computer system as they're going to do that if the information needs to be accurate from the very beginning. We don't have to wait for that system in order to have vendors turn in their time with the correct hourly rates, with the correct receipts, with the signed statements and things like that. It's not a blame issue, it's an issue that we identified that there were a lot of errors that were happening. Instead of fixing them for a vendor, we send it back so that they understand where their error is so they don't continue to make it moving forward and then everybody gets paid faster.

Commissioner Ludwig: Okay. So, it sounds like that was a yes, the delays are really caused by people's errors in their vouchers. Is there any plan or any process by which you expect the processing of correct vouchers to be going faster in the

future? I'm not talking about the system we'll have in place in a couple of years, but in the next 24 months, is there any way to make your process more efficient once you get a correct bill?

Julie Fetsch: We have 45 days to pay non-contracted vendors, we are currently at 37 days for that turnaround time. We continue to improve our processes to make it faster. We're trying to get it within 30 days but we are still in compliance with what the State agency requires. It's not just a matter of writing a check to a vendor, we have to take that information and we have to code it. We have pots of money that we're spending. That information has to be coded and it has to be entered into the State system so that we can generate the payment through another State agency. So, it's not as simple and there's a reason why the State sets a benchmark of 45 days to do that. That's very common and it's not specific to us too.

Commissioner Ludwig: Is that 37 business days or 37 calendar days?

Julie Fetsch: Thirty-seven calendar days.

Commissioner Ludwig: Okay. And then I have one more question and I don't know who should address it. But the other main concern that we saw raised in these letters as far as I could tell was a lack of transparency about both the rules that apply and changes to the rules. And that concerns me, because there's just no reason not to have the rules be available to everybody and any changes be transparent and announced in advance. So, I'd like you to address, I mean, whoever to address that.

Julie Fetsch: Well, the payment policy, if you're talking about specific payment, I think that in the letters that I read, it was mostly the mitigators that were talking about a change in a policy and what we're implementing... Well, Eric, go ahead, you're on.

Eric Deitrick: Oh, I just popped on because Chair Ramfjord, Vice Chair Welch, members of the Commission. I think one of the things that really needs to be highlighted here is there's a difference between policy and norms. We haven't had sufficient staff to do our job since I've been at the agency and presumably for two decades. And so there's a lot of manners in which business operations happen that are not by design, they just fall into that pattern. And when we've got more employees over the last few months, we have correctly begun to scrutinize some of our decision making and those aren't necessary policies.

Let me give you an example. Last week, I sent out an email to the death penalty community informing them that they can no longer bill us for the privilege of doing their billing. Because we've been getting billing from death penalty providers that includes time assessments for them doing their billing and contacting us about doing their billing. They viewed that as some sort of... I got, like, six emails that that was some sort of a privilege they

believed they had and everyone knows you can't bill for doing your billing, I was kind of shocked by the response. So, part of the frustration we're having is we're really trying to scrutinize things, make improvements, and establish consistency, and anything we do is viewed as changing a policy and it's not. We're just trying to get things right. So, I think that's part of where the back and forth rests.

I can tell you that on the travel time thing, I talked with multiple psychologists in the major vendor groups we contract with about this policy before we started it. Like I say, I'm coordinating with the two State trainers on this, I'm working with the Sheriff's Association and communicating with stakeholders in the NRE workgroup. So, to the extent the travel time or not paying people for billing us, those are things we communicated, I think, pretty normally.

I do think that we spend a lot of agency time right now and it's very frustrating trying to track down rumors about things that we're doing. Because we're all constantly emailing, "Have you heard this? We got this letter. Are you doing this?" And we're unable oftentimes to even understand what they're talking about. So, I hear their concerns about a lack of transparency. I think it's really important to note that this system has been bent toward providers mostly out of triage and underfunding since its existence. When I contacted the State Hospital and found that they don't bend their rates to the whims of the psychologists, they have a flat rate and they honor it and they go forward with it, that's a different culture and it's a culture that our agency hasn't gotten to yet. But it's a more professional culture that we are trying to get to and we are consistently getting pushback on that.

So, I think part of the frustration, and I see this in the NRE system myself, where people are just so used to getting everything they ask for that when we finally have staff to try to manage our budget like we're doing with psychologists given that we're 25% over our budget, we get a measurable pushback for trying to make business decisions to keep public defense funded.

Commissioner Ludwig: I have one more concern, I guess. And I guess I'm a little concerned about the tone of your responses. I just have to say that this is an agency that is supposed to help us serve clients and the way you guys are coming across is really defensive. And maybe that's because you're being criticized but I think I hear more defensiveness than I hear an effort to try to resolve legitimate problems, like people who are expressing genuine bewilderment about, "I didn't realize that I couldn't bill for that," or, "I don't understand why suddenly my rate is changing," or, "Certain things are not being compensated that used to be."

And this is also an agency that had a person billing four times for visiting four different clients and apparently the explanation was, "I didn't know I

wasn't allowed to do that." And so if there's a communication problem where you're operating on rumor instead of clear communication, I think it's incumbent on the agency to say, "It sounds like this isn't clear so we're going to state what our policy is about it." I don't think that it should be the responsibility of the providers to be asking questions and complaining, when how you bill things and what you can bill for and any time it changes, should be something that's publicly and easily available to them so they can do it correctly.

And I think when they have questions, they should be treated with respect and courtesy. Just the way this interaction is going has made me, I guess, find those complaints about discourtesy a little bit more credible. And so I worry about that, because we depend on these providers to do a job that isn't easy and that they could go do someplace else for more money, many of them. We've had a problem with driving providers out of the business and if we can't compensate them with more money, I think that we absolutely have to compensate them with fair, appropriate, non-hostile, clear communication treatment at every turn. They need to be treated like customers by the agency, not by a hostile force, that worries me. So, that wasn't exactly a question, it was more of a concern.

Executive Director Borg: So, I would like to address that. I have heard that too, but one of the frustrations that we're having in trying to, and echoing something that Eric said, and I apologize if we're coming across defensively but we are feeling attacked and we are feeling, in some cases, unjustly attacked. And we spend a lot of time getting an accusation and then go chasing it down, and I would have to say of the last... They come to my level, people contact me directly maybe three times a month and I go and look at these things and they never pan out.

And a lot of these accusations are things like, "Well, this isn't happening to me but I hear this is happening." And so we spend a lot of time with that. Now, to this point, what I will be doing and what we are proceeding on is we already publish on our website the number that Julie is talking about. What day we're processing, so people can figure out where the processing is at. That was something we were asked for. That's already available there, it's on the website.

But I am going to be seeing if I can find and afford, like everybody deals with when they call a lot of places, that we will start recording the phone calls that come in to AP. And we'll notice people on that, just like all these phone calls that say, "This is being monitored and recorded for training purposes." But we will start recording that because we hear that, that somebody says, "Well, I was treated with discourtesy," and it's hard to pin that down and say, "Well, what was the exact incident?" "Well I heard somebody, this happened to them." And then on the timing, because there is a difference, as I was trying to make the point, there's a difference between what, as that time runs, when it is attributable to the agency and when it's not

attributable to the agency, I've asked Julie to now find a way to understand on each bill how many days did it take within the ones we were responsible to process it so that then we would have statistics on are we at 95%, are we at 97%? Inevitably, we got delays because of the smoke. We were closed for an entire week because it was dangerous to be in Salem during the fires and I didn't want to imperil the staff by saying that they need to be in there. So, we did lose some time there.

I expect things like that will happen and I've asked Julie to figure out a way so that we can publish along with the day that we're processing, what percentage that we are meeting of the State standard of the 45 days or our internal goal of 30 days. Another echoing thing on that is that it's not just a matter of like, "Oh, well, that's what it is and too bad, so sad." I mean, the legislature's aware of it, LFO is aware of that. We asked for, under the plan that we worked out with the SPA to build infrastructure, to address things like this with the legislature for significantly more positions than they actually gave us. But when they look at that, they will look at this and say not... It's not a priority to LFO that we pay bills in 10 days or 15 days. If we're within that State standard, that's what they're going to fund us for and they're not going to see it as a big need to go out there.

So, I apologize, Commissioner Ludwig, if we are sounding defensive but it's because we are also feeling attacked and it's hard to figure out where the actual verification of that. It's an attack of like, "Well, this is going on, you guys are doing this to other people, I hear." We're having a hard time tracking down exactly the substantiation of the accusation.

Commissioner Solomon: If I may?

Chair Per Ramfjord: Yes, go ahead.

Commissioner Solomon: So, Commissioner Ludwig, I appreciate your comments. I read all of the letters, I appreciate the time that people put into them. I am trying to understand what the agency is saying and also reading some of these letters and understanding the concerns that people have. And there are a couple of points that I want to have you address. One is around the length of time. So, 45 days is the State standard but that shouldn't be what drive... I mean, I would think that we would want to get these processed as quickly as possible. So, if we can get them below 30 days that would be great in my mind. This is also to Commissioner Ludwig's point is if people are processing them correctly, they're getting lumped into one global pot, is that my understanding, so that theirs are being slowed down by ones that aren't being correctly processed or being correctly filled out?

Julie Fetsch: Commissioner Solomon, if I could answer that really quickly.

Commissioner Solomon: Yeah.

Julie Fetsch: That was what I was trying to explain in my report is that that's what was happening previously, that the Accounts Payable staff, everybody just got in line. And we were fixing vendor invoices that had wrong rates, that had missing information, all in the same amount of time. We started a pre-audit process that the minute that they send that invoice in, we have separate staff now that go through and check for those main things that are super-easy to see, that that's not the right rate, that's not the right mileage rate, it's missing this, that, and the other thing. We're sending those back immediately so that that vendor doesn't get to be 30 or 45 days down the line and suddenly we say, "Hey, by the way, your invoice isn't good." So, we're sending those back so that they come in correctly which saves the staff time to put the information into the system and continue to move forward with the invoices that are right.

Commissioner Solomon: Okay. So, regarding the policy change piece. I hear Eric saying that there are a lot of policy changes but I think, if I'm hearing correctly, the providers are saying, they're talking about policy changes that are directly related to the NRE processing. How is that communicated to them? Are there trainings? Is there information that is being provided on a regular basis about how these should be completed in a correct and timely manner?

Julie Fetsch: That's not my department so I'll let Eric or Lane answer that. You're talking about the NRE intake?

Commissioner Solomon: Yep.

Julie Fetsch: Okay. Eric would be on that.

Eric Deitrick: Well, I'm not sure, Commissioner Solomon. Are you talking about the NRE intake where people request services or are you talking about the process for which they submit their billings? Because I think you were talking about...

Commissioner Solomon: For which they submit their billings.

Eric Deitrick: Yeah, that's what I thought, Julie.

Julie Fetsch: So, I'm sorry, say that... So, I apologize. What was your question again then, to clarify? For the billings?

Commissioner Solomon: Yeah. So, how are changes that have been implemented over a period of time being — in policy — being rolled out to the providers? Are there trainings? Is that information being provided in writing to them? How is it communicated so that they know this is the way that we should be doing things?

Julie Fetsch: With the limited staffing that we have, I don't believe that we... I would love to be able to give trainings, by the way. With the limited staffing that we

have, that's not been a practice in the past. We do have a payment policy that is updated, I think last in 2019, December 2019, I think. And so that information is disseminated that way and people know that the payment policy is there. As we make changes to policy... So, if you're talking about the mitigators, that was communicated over several months with several meetings and lots of emails and lots of memos that went out to each one of those.

Commissioner Solomon: Well, let me just use as an example — I'm going to read from James Comstock's letter, he said, "Over the last 18 months, providers have learned about changes in policy primarily by having invoices rejected due to new requirements which were not publicly announced. This happened approximately two years ago when providers were suddenly required to separate out travel time on their invoices. Rather than making an announcement stating that invoices submitted after a certain date would need to have travel time logged separately, bills were simply returned as they were judged to be non-compliant with the new policy. This has happened again and again over relatively small matters which could have been easily communicated from OPDS to providers. Often OPDS staff have given conflicting direction to providers with regard to the manner in which they should prepare or send invoices, sometimes giving conflicting or directly contradictory direction in the same week or even the same day," and then he goes on.

Julie Fetsch: All right. Thank you, Commissioner Solomon. I wasn't here two years ago, I don't know how that information was communicated. I do know that since I have been here, we have not implemented any payment policy changes like that as far as submission. Those are all existing policies. The mileage rate changes on a regular basis, that's published on our website and that's actually communicated also out to the provider community. The State changes that every single year. All of the other corrections that we have returned to the vendors have been...it hasn't been a change in policy, it's been whatever the policy is. The rates, when the rates change, that information goes out, yes.

Chair Per Ramfjord: This is Chair Ramfjord again, just so I understand. What I'm sensing here is a situation in which the agency is applying its existing policies more rigorously. The provider community is sensing that as a de facto change of policy, because policies that they didn't have to adhere to before now have to be adhered to.

And I think that part of what's going on here, that does need to be communicated more directly to the provider community and that's being done right now in this meeting, is that particularly given the budgetary constraints under which we're operating, particularly given the need to limit the amount of money we're spending on NREs and other things, we're going to be looking at incoming requests to make sure they're compliant with the existing policies. Also to try to move things along, we don't want to be

having our staff devoting their time to correcting mistaken or improperly submitted NREs, so we're going to reject those and they resubmit them.

But I think that there's been unfortunately here, there has been a lack of communication about what was going on, but that does strike me as part of the issue. I would also applaud Executive Director Borg's idea. If we want to record phone calls, that's fine. I wouldn't say it's for training, it's for customer service. It's just to ensure that we're providing good customer service and it makes sure that everybody is accurate on what they're saying and is doing a good job, so I think that's a great idea. But I do sense that — and correct me if I'm wrong — but I do sense that part of this issue has to do with the provider community having been used to doing things a certain way and then all of a sudden policy that may have been in place is being applied more rigorously than it was in the past. Is that fair to say?

Julie Fetsch: Yes, it is.

Executive Director Borg: Yes, I think it is fair to say.

Julie Fetsch: Yeah.

Executive Director Borg: But I think it's also somewhat justified because in this process, because it's only been...we're in our, I think, second full year of being annually audited by the Secretary of State. Again, we say this and I'm not sure it's necessarily throughout the provider community believed or accepted, but in cases, they will literally go and pull specific bills and ask. They want to see the whole trail, was this done right? And we are not going to convince LFO to support additional funding if they see problems in that. And they have specifically brought up, I mean, the LFO specifically has asked about certain NRE expenses, expenditures around psychologists. Those are not fanciful on our part, it's stuff we really have to pay attention to because we will be held to that standard within the State.

Chair Per Ramfjord: Okay. So, just to back up. Commissioner Hardin, I'll get to you in just a second. But just to back up here, what I'm sensing is that the motivation on the agency's standpoint for being more rigorous is related directly to the fact that we've gone to being audited on an annual basis by the Secretary of State. And that we believe that based on those audits, that there's a need for us to adhere to existing policies more rigorously and to avoid situations in which we have staff, frankly, quote/unquote, "correcting," assuming that this is what should have been submitted, and writing it in on behalf of providers. As opposed to having the providers actually submitting that information, which is a requirement under the actual billing guidelines for it to be paid appropriately. Is that true too?

Executive Director Borg: Yes.

Julie Fetsch: Yeah.

Chair Per Ramfjord: All right. Commissioner Hardin, go ahead, I'm sorry.

Commissioner Hardin: No, no problem. I have a couple of suggestions, quick suggestions that may be things you're already doing, and then I have a question. So, the first is regarding the NRE Committee. I'm assuming it's within their scope to look at billing and payment process so that if you're not already doing it, I hope that you, Julie, and perhaps a representative or two of your staff would meet with them, go through the process with them, and see if they have any ideas.

And then second would be, at the same time, give them a copy of your written policies and see if they have anything to add in terms that they think would help clarify or improve the communication of your policies for the providers in the state. So, those are my suggestions if you're not already doing it. And then my question is in a prior meeting with the Commission, you explained that there are some new auditing processes and expectations and that you have had to respond to them in ways that have changed your procedure a bit, your process a bit, and I wonder if you could just explain those again very briefly, how the audit process has affected you and required you to change your process a bit.

Julie Fetsch: You mean how the Secretary of State's audit has caused...

Commissioner Hardin: Yes.

Julie Fetsch: ...us to change that? Oh, you're going to make me do this on the fly. Well, the Secretary of State does require three levels of... Not the Secretary of State. The State accounting rules do require separate levels of approval. And in a regular State agency, if you had a contract, there would be a contract administrator. They would sign off, somebody would turn in a work order, they would sign off on that. Then it would come through to the State agency, they would sign off on that. And then a separate person would make the payment for the agency, to authorize that. So, the people aren't paying their brothers or sisters or causing that.

So, that's the system that we have out here and I'm not sure that I'm answering your question well. That's a system that we've set up out here. We cannot just pay an invoice. We don't have a checkbook, we don't just write an invoice because somebody sent that in. We have to verify that against the State policy, we have to verify it in the eCourt system, we have to code it accordingly because we have limited funding and each one of those pots of money, it has to have a special code attached to it that goes into that pot of funding. So, it's more, the process that we are in is more in depth than a regular business would be and so that's what the time consuming portion of it is. That's why the State allows 45 days to process those payments because it's a reasonable amount of time because of the

amount of work that has to go into that when you're spending taxpayer dollars. Oops, I think you're on Mute.

Commissioner Hardin: Oh, sorry. So, how is that different than what was happening before?

Julie Fetsch: I think that it is just as Per stated, that we are just being more stringent about making sure that we comply with those policies, about making sure that we're not going to get tagged by the Secretary of State, that we paid somebody... A good example is the vendors that we're paying where they have doubled up, where they've billed us for the same travel time on three different cases. That's the kind of information that we need to set a process up for that we're catching that and not paying them three times for the same work over. And that's what this new computer system, the IT system, is going to be designed to help mitigate. We are responsible for spending taxpayer dollars, we're responsible for making sure that those are being spent appropriately, and if we do not comply with that, we risk losing our funding. That's the final straw is that you risk losing your funding if you're not doing those processes.

Commissioner Hardin: Okay, thanks. And do you have any response to the suggestions?

Julie Fetsch: Commissioner Hardin, actually, I am part of the NRE workgroup. It's Eric Deitrick's workgroup and we do participate in that and maybe he wants to — I saw him just pop on there — maybe he wants us to respond to that. But we definitely are talking about those types of things and I'll let Eric respond to that.

Eric Deitrick: Yeah, just briefly, Chair Ramfjord and Commissioner Hardin. We actually, at the last meeting, started our first conversation about that exact issue. And I expect it'll come up again at future meetings. So, I appreciate the comment and it's totally appropriate and we agree that we're trying to do that in that group as well.

Chair Per Ramfjord: Yeah, this is Chair Ramfjord again. I think that anything that can be done to clarify the expectations is important. I mean, James Comstock has made a comment, "The changes and more stringent requirements are generally fine but they need to be clearly communicated ahead of time so our already delayed bills are not sent back for reasons we can't anticipate. I think anything you can do to have frequently asked questions or as issues come up, to send a blast email to people, say, 'This issue has come up. Just for clarity's sake, this is how we need to have it done.' Anything you can do along those lines I think would be greatly appreciated by the community and would actually really help you get things done more efficiently and quickly." Did other people have other comments on this? Yes, Commissioner Christ? And then Commissioner Bell.

Commissioner Christ: I have a couple hopefully quick questions. I assume that the rules governing invoices are readily available in one place on the website? Is that true?

- Julie Fetsch: Commissioner Christ, yes, the payment policy is located on the web page under the provider information page and there is a whole host of other memos that have gone out, all of that information is included in the website.
- Commissioner Christ: Well, I think if the rules are dispersed between memos and the website, that may be part of the problem. So, I think they should all be in one place and I would assume that every time you return an invoice or reject one, that you cite the applicable rule. Is that universal practice?
- Julie Fetsch: Universal practice when they send something back, and we are talking about somebody who is...when we send them back for non-compliance, they've just simply used the wrong rate. That's not the rate they were authorized for, that's not the correct mileage rate, and so that's the information that says, "Please go back and correct the mileage rate or the hourly rate you did," or, "Please reattach..." They're required to sign a fee statement. If it's not signed, we have to send that back and say, "You need to sign the fee statement." And the same with the receipts. These aren't new vendors so they're familiar with that and our hope is by sending them back initially, immediately, and showing them that, "Oops, here's some information," that we will start getting ahead of the curve with that and we'll see less and less of them come back.
- Commissioner Christ: Okay. I have one more question. This is probably more for Eric. Like the other commissioners, I got these letters and emails from providers complaining about the agency's billing practices. And for me, it's almost impossible to determine whether they are representative of the community as a whole or they're outliers. Without knowing how many providers are out there, how many invoices you're getting. So, at one point, Eric, you were talking about all the various providers — the psychologists, investigators, mitigators, and all that. How many people are we talking about? In any given month, how many providers are submitting things? So, that would help me to evaluate when I get eight letters from unhappy customers how big a problem this is.
- Eric Deitrick: So, Chair...
- Julie Fetsch: Commissioner...yeah.
- Eric Deitrick: [Laughs] You go.
- Julie Fetsch: Commissioner Christ, I can answer that. The Accounts Payable department processes between 2,000 and 3,000 payments every single month.
- Commissioner Christ: All right. Is that 2,000 to 3,000... That's not 2,000 to 3,000 providers, one provider may be presenting several, right?

- Julie Fetsch: Last time I counted unique individual providers, there was over 1500.
- Commissioner Christ: In a month?
- Julie Fetsch: Overall, 1500 unique providers that we pay in the agency submitting multiple invoices, multiple NREs, that equal about between 2,000 and 3,000 NREs every single month. We receive about 100 to 150 a day, work day.
- Eric Deitrick: And Commissioner Christ, we can get you the specific number, we're just not prepared to at this meeting. To your point, I mean, just with psychologists I can think of, there's probably 50 to 60 that we work with with regularity. In terms of investigators and mitigators, it's significantly more than that. So, we can get you some more information after the meeting about the exact number.
- Commissioner Christ: Okay. Well, just to finish up, I'm trying to evaluate this and some of the letters used the royal "we" in explaining their discontent and it was signed by one person. So, for me sitting here as a commissioner who is not in this community, it is awful hard to figure out how big a problem this is, how widespread it is. I mean, clearly, for these people, it's a problem and we need to fix that and I think you're hearing some helpful suggestions to that end. But if you could give me some information, Eric, that would help me evaluate how representative these complaints are, that would be useful. Thank you.
- Eric Deitrick: I could do that. Thanks.
- Commissioner Bell: Now, this falls in, I think, the spirit of the suggestion front, but I've been in organizations where there's been a similar — and I'm sure everyone has — where there comes a point where there's more rigorous application of existing policy and folks experience that as new [Inaudible 03:41:12] and the folks on the other side experience it as, "Oh, we're just doing our job." And there's relationship rifts that can happen and I think that we're seeing some of that, in both the tone of the letters and then the tone of the initial response. And so I guess my suggestion is that if there are things to do to help repair that relationship, I think that would be useful. And again, this is just in organizations that I've been, they're totally different. It's really difficult, I think, with COVID to have any face-to-face contact. But if there were a video training where folks could come in and get all their questions asked and hear the FAQs and just get that interaction. I wanted to suggest it as something to consider so that people feel heard on both sides.
- Julie Fetsch: Thank you.
- Commissioner Ludwig: I have one more, I guess, concern that I wanted to express. Before I say anything, I should disclose again, I think everybody knows, but I'm married to one of the mental health providers who does evaluations. And what I'm a little bit worried about is that we're talking about examples of policy

changes that have happened. From what it sounds like, the decision to cut travel for mental health evaluators was a policy decision that was made, although I'm not sure how it was communicated to the lawyers and the constituents that are affected by it. It really should be something that's published to everybody who provides services in the state if there's a policy change like that. I'd like to know if there's a way to request that that be reconsidered.

Because as Mr. Deitrick said, it was a business decision. And to my mind, that's concerning because it really should be a client-centered decision made based on the principles of ethical representation, not a business decision. And talking about Aid and Assist evaluations that can be done in kind of a drive-by fashion is one thing, but most of the evaluations that we do are not Aid and Assist. Aid and Assist is a fraction of the type of evaluations that we do in the state. Just to give an example — well, certainly there are many, many jail facilities where you can't do a video evaluation around the state. There are jails and other facilities where you can't even do a phone evaluation because it's not confidential, there's no way to guarantee that it's confidential on the side of the client.

And I know of at least one example where a provider did a video evaluation over three different sessions and it was recorded by the jail and supplied in Discovery. And so it should be a decision between the evaluator who has ethical requirements, and the lawyer who is hiring them and conferring them, to decide whether that person travels or does a video evaluation. It shouldn't be a business decision, it should be a decision based on ethical requirements and requirements of good representation. I mean, our court system is the largest mental health provider in the state. Mental health is a huge issue for our clients and not just Aid and Assist but all other types of things that require evaluation. And that just really concerns me.

And I think that this was one of the examples of a policy change that, I think, six psychologists signed the letter that went out to the commissioners. It isn't just one person complaining, it's a whole group of people. They're raising legitimate concerns and the opinions of two psychologists who do a very limited practice in one urban county is not enough to base a policy change on without a little bit more feedback. So, that being said, my husband derives his income in large part from OPDS, so I do have an interest in that process.

But also as a person who represents clients in the system I have an interest. And I want OPDS to make this decision based on ethical, appropriate considerations, not just an attempt to save money. I mean, if you want to really save money, don't give an arbitrary \$100,000 increase to mitigators. Use that money to pay for travel so evaluators can go see clients in person when they need to. Okay, I'm done. There, I've expressed my concerns.

Eric Deitrick:

Chair Ramfjord, Commissioner Ludwig, everything the agency does is a business decision. We have a budget and we are required to stick with that budget. We don't do so coldly. I mean, I did this work for a living. I understand how important it is. But everything is a business decision. Aid and Assist evaluations are by far the most common type of psychological evaluation that occurs in the State of Oregon, so it's not a small piece, it's the overwhelming majority of what we fund.

And I'm happy to revisit the travel policy. When we were assessing costs, telling providers they were going to take a pay cut seemed like a tougher conversation, so we went with cutting travel time in half. And we can bring back travel time and adjust overall rates downward to accommodate that and we're happy to have that conversation, but this wasn't, again, something that was done lightly, I could talk to you for hours about this. The defense bar has done a damn good job of highlighting the issue of mental health in jails and the investment we've made in psychologists statewide has had a serious impact. The public is now more aware of the way at which folks with mental health issues are thrust into the incorrect system, i.e., the criminal system and they should not be. We have capacity issues at the State Hospital because of the number of people that law enforcement officers are steering into jails. Our attorneys with their psychologists are getting them routed to hospitals.

So, I'm clearly aware of the impact and the positive impact that our psychological professionals have had working with public defense providers in this state. But again, we report to the legislature. Our expenditures are inexplicably up 25% this cycle. And when we look at the historical trends, we see more and more time and higher and higher rates demanded by the professionals. And they threaten to quit doing the work. We lost a provider in Deschutes County last year, our only person over there, because we refused to pay them \$225 an hour. And so these things that we have to assess day by day to figure out how to get the work done statewide is not done without thought, it's not done without consideration. We are constantly trying to find ways to get psychologists to certain areas around the state. Dr. Millkey and Giten, who do train the folks on psychological evaluations, again, say this is 100% fine for Aid and Assist evaluations.

I would agree with you that for other types of evaluations in which testing of clients is necessary, you can't do that over telehealth. So, there are limitations when you get beyond the Aid and Assist evaluations for other types of psychological evaluations. This is though the majority of what the services are for, is for Aid and Assist. So, I am open to reconsidering anything but in total of how we discuss it, it has to include some way to trim psychological costs.

And part of this, frankly, I do think involves working with our public defense providers and DAs to understand that you do not need a full-blown evaluation for everyone experiencing mental health. Sometimes it's pretty

obvious. When Dr. Millkey and Giten began the Multnomah County Rapid Aid and Assist docket, they were stunned by how little time they actually needed to spend evaluating these people because they are transparently incompetent to stand trial. And yet we have attorneys routinely requesting 30 hours for a psychologist to travel six hours by car.

So, we need to get a better handle on it, we're trying to. But in the meantime, particularly as we're rolling out this new contract model, we do have to demonstrate a commitment to protecting costs and that's what we're doing.

Chair Per Ramfjord: Okay. Just want to note a few comments that have come in on some of these issues and then I think we are definitely running low on time here.

Kaysea Dahlstrom: Per, this Kaysea, if you could actually start at 12:30 PM with Adrian's comment, I think that was the last one we left on. There's quite a few but that would...

[Crosstalk 03:50:05]

Chair Per Ramfjord: Yeah, yeah, yeah. Okay. That's a comment that kind of goes back to the urban/rural time split. I think we've actually discussed that at some length at this point in time, but I think that the issue there is really keeping that urban/rural time split in mind, keeping travel time in mind, when we're talking about that. I think that is something that we really do try to do.

Commissioner Christ: Per? Per?

Chair Per Ramfjord: Yes?

Commissioner Christ: I'm sorry to interrupt, but we seem to be running late on time and I'm just wondering about the necessity of reading aloud every comment. At least...

[Crosstalk 03:51:00]

Chair Per Ramfjord: Tom, I'm not going to read them all aloud, I'm going to summarize a few points here and just note the extent to which they're addressed, okay? So I'm not going to do that.

Commissioner Christ: We're all commissioners. At least this commissioner is reading every one of them as they come in.

Chair Per Ramfjord: Right, right. But I think that there's some desire to make sure that we've addressed some of these points. There are several comments regarding forensic psychologists and some of the issues that we've discussed on those points, I think that that's something that we've tried to address here. I think there's other comments from Steve Gorham and Gordon Mellon about paying administrative costs and how administrative costs have been paid in

the past. I think the issue here is that some things may have been done in the past but there are changes there and that just underscores, I think, the need for greater clarity, the need for the FAQs, the need perhaps for a single call, a Zoom call, for providers to come in and ask whatever questions they have on that call. That can be recorded if we want, just to make sure that there's a forum for an opportunity to deal with some of these issues.

There's definitely multiple comments suggesting that we'd love to have more consistency in terms of the timing, shortening the timing. And I think that it's clear that the agency would like to do that consistent with trying to adhere to policy. Shawn McCray noted that they would be willing to do some training perhaps during the management conference on NREs, I think that would be appropriate as well. I think the other thing that does come up from Eric Deitrick's comments is that perhaps training on the area of the appropriate use of psychologists and Aid and Assist evaluations and things like that may be relevant as well.

So, those touch base on a lot of the comments that have come in but it is true, as Commissioner Christ said, that we've been reading those all along and they certainly are going into our thought process on these issues. So, with that, we do have the NJDC update that we'd like to get through as well. And I have a feeling that we're probably going to be discussing issues regarding Accounts Payable in the future again, I don't think this is going to be the last discussion on that.

So, I think that this is an important issue. It's obviously important given the number of comments we've gotten from people and I think that you've certainly gotten the Commission's attention. I think we should schedule an update on where things are and on whether we've had any ability to get additional information up for the next meeting so that we can ensure that there's ongoing progress and that people's voices on these issues are being heard. But with that, I would be inclined to move ahead to the NJDC update if we could do that. And that would be Keren and Ms. Van Dusen. All right, thank you.

Norah Van Dusen:

Good afternoon, Chair Ramfjord and members of the Commission. My name is Norah Van Dusen and I am PCRJ Juvenile Defense Counsel. Prior to joining OPDS, I worked as a public defender for 14 years defending juveniles and adults in criminal and juvenile court, most recently at Metropolitan Public Defender in the Juvenile and Major Felony Units. I hope that the Commission received and had an opportunity to review our memorandum on the recent report issued by the National Juvenile Defense Center, or NJDC for short, which examined the Oregon Juvenile Defense System.

I am here to outline key findings and recommendations from that report and to provide you with OPDS's plan to address the issues raised in the report moving forward. After the summary, Keren and I are happy to answer questions or to respond to comments from the Commission. So, to provide

you with some background, especially for those of you that didn't have an opportunity to read the report, which was quite lengthy. In 2018, NJDC conducted a thorough evaluation of Oregon's Juvenile Delinquency Defense System. It examined 10 counties across Oregon which were chosen specifically as representative of state practice, the counties visited by the assessment team were not identified in the report.

NJDC conducted extensive interviews, observed court proceedings and examined court forms and documents. The study culminated in a detailed report which was released in September of this year. The report provided an unflinching analysis of how Oregon can better ensure the due process rights of youth are protected and realized across the state and also provided a roadmap for how we can improve juvenile delinquency representation, oversight, and procedure.

So, in terms of the scope of the findings in the report, mentally, for the sake of clarity, I have divided up those findings and recommendations into three broad categories. First, systemic issues. Secondly, statewide oversight and training issues. And third, defender-specific concerns. In terms of systemic issues, the main takeaways from the report are that there is a need for a uniform code of procedure for juvenile delinquency cases. We are one of only a few states in the nation that does not currently have a uniform code of procedure for juvenile delinquency cases and this results in some inconsistencies around how juvenile delinquency practice is administered across the state.

Secondly, protect youth against uninformed waivers of counsel. This is something that has been addressed, I believe, in the past, or attempted to be addressed legislatively in the past. The report found that across the state, there is inconsistency in how youth are allowed to waive counsel and that youth are often permitted to waive counsel without first having an opportunity to consult with defense counsel about that decision. Thirdly, elimination of fines and fees. Fourth, ensuring timely appointment of counsel at every stage of a youth's case from arraignment through post-disposition. And that there is a need for defenders to be appointed to a youth's case on the front end in time for a defense attorney to have a comprehensive conversation with the youth prior to arraignment, and on the back end to monitor and make sure that youth are getting what they need on probation, and that also we are ensuring that youth are safe and successful when they are placed outside of their homes.

Additionally, increased access to expunction. And finally, to eliminate racial disparities across the system, which is obviously both needed and a large task for all of us to take on. In terms of defender practice findings and recommendations, the report recommended an increase and improvement in motion practice, Discovery litigation, and use of trial advocacy to resolve cases by juvenile defenders across the state. Additionally, strengthening advocacy at release and dispositional hearings as well as plea hearings and

increasing access to appeals. The issue of increasing access to appeals also dovetails with stronger litigation advocacy across the board from start to finish in a juvenile case.

Finally, in terms of training and oversight recommendations, which is something that falls more squarely into the lap of OPDS, the report recommending strengthening oversight and enforcement of juvenile defense standards. So, that would be both the standards that we have in Oregon and the national standards such as the ones that have been codified in a more informal way by NJDC. Centralizing data collection across the state in order to monitor how defenders are doing, what their caseloads are, whether or not they're meeting the benchmarks that we would expect given the performance standards, and ensuring access to quality delinquency-specific training.

OPDS takes seriously the report's findings and recommendations and is committed to ensuring that Oregon's youth are afforded access to zealous, high quality defenders. We are fortunate in Oregon to have committed defenders across the state who I believe want to provide the best possible representation to youth. We recognize that more robust training and support will strengthen the quality of representation for youth and that increased oversight and data collection will help make sure that youth are, in fact, getting the representation that they need and deserve and will also help us to identify areas that need to be strengthened going forward. The report makes clear that standardized statewide juvenile delinquency-specific training is needed.

To that end, OPDS plans to collaborate with system partners to address the systemic issues that are highlighted in the report. In order to gain a better understanding of the issues that are identified in the report, we will be issuing a survey to practitioners across the state. We are also reexamining the kinds of targeted support, data collection, oversight, and juvenile delinquency-focused training that we can develop in order to strengthen juvenile delinquency practice among our contacted providers. OPDS is committed to strengthening and improving indigent juvenile defense and to working with partners statewide to reduce barriers to justice for juveniles.

Thank you very much for reading the memorandum and for listening to my comments and if the Commission has any questions, Keren Farkas and I would be happy to address them at this time.

Chair Per Ramfjord:

Okay. Do commissioners have questions for Ms. Van Dusen?

Commissioner Bell:

This is Commissioner Bell, I wanted to thank you for the summary and the recommendations and the direction that you provided. And I wanted to also ask about the number of referrals that are being made by trial counsel to have an appeal. Something that stood out in the report to me was the extremely small number of published opinions in this area and the small

number of appeals that are being filed. So, you can follow up on this later, but I wanted to suggest or ask is we get the data about how many referrals are actually being made for appeals so that we know whether the problem there is with the cases not getting referred or something later downstream.

Norah Van Dusen:

So, I think that folks in our Appeals Division can probably speak better to the number of referrals. I can speak to, I think, observations from the report that are made on a more practice level, which would be that as is true in the criminal system, the majority of cases in the juvenile system are resolved with pleas as opposed to trials. And that certainly cuts down on the number of appeals that tend to be referred. The report also observed that defenders should be making sure that youth are advised of their appellate rights in all cases. And also I think that training is one way to buttress, I think, the filing of appeals and referrals of appeals in this state.

And what I mean by that is that I think that with stronger training, especially around criminal issues, which is a large part of what you are dealing with in a juvenile delinquency case, defenders will be better able to spot the issues and preserve the issues that would be ripe for appeal, and also to become more comfortable doing the kind of litigation that presents issues for appeal. So, I think that there are definitely ways that that can be addressed on the ground in terms of practice.

The other thing that I will note about that is that until Senate Bill 1008 passed, a large number of cases, serious cases, were being diverted to adult court via Ballot Measure 11. Those cases are now coming back to the juvenile court. And so I think that defenders are going to be dealing with both more serious cases and more serious issues on the ground. And I would imagine that we may be seeing some more appeals coming out of those cases, if those cases get litigated. The fact that those cases are returning now to juvenile court is obviously an extremely positive development but it also does highlight the need for more robust training.

Eric Deitrick:

Chair Ramfjord, Vice Chair Welch, and Commissioner Bell, to your question. We can get you more specific answers to your question about the number of referrals. I did want to note because I'm not sure the entire Commission knows the general structure of appeals.

We do have an Appellate Division that handles the majority of the criminal appeals statewide, they handle representation for parents in juvenile dependency appeals, and that is the main carrier for appellate practice statewide. We have some panel attorneys that go through review with the Appellate Division and my team. They are panels of attorneys who will handle criminal and juvenile appeals and we do have those panels and those attorneys are available.

And then we have three law firms or groups that we have contracts with that do appeals. One is O'Connor Weber which handles primarily post-

conviction relief and other serious felony case appeals. Multnomah Defenders handles civil commitment appeals, they have a contract. And then YRJ has a contract to do some juvenile dependency and delinquency appeals as well. So, when it comes to our internal numbers, we have a better understanding because we're literally handling the cases, but to get more specific information about the other appeals that are done outside the agency, we'll have to get that data and report it back to you.

Commissioner Bell: Great, thanks.

Chair Per Ramfjord: Okay. Are there other questions? Okay. Hearing none, thank you so much for the report.

Norah Van Dusen: Thank you.

Chair Per Ramfjord: Very much appreciate it and very much appreciate the time you put into that, thank you.

Norah Van Dusen: Thank you very much.

Kaysea Dahlstrom: Per, this is Kaysea. In an interest of time, we can absolutely forego any of the OPDS staff updates.

Chair Per Ramfjord: Well, yeah, I was actually wondering about that, whether we could just put that off until the next meeting at this point.

Kaysea Dahlstrom: I think we absolutely can.

Chair Per Ramfjord: Okay. Well, since we are already over time then, unless there's something urgent that somebody wants to mention at this point in time, I would entertain a motion to adjourn.

Commissioner Christ: So moved, Commissioner Christ.

Commissioner Hardin: Mark Hardin, second.

Chair Per Ramfjord: All those in favor?

Commission: Aye.

Chair Per Ramfjord: Any opposed? All right. Motion carries. We are adjourned until our next meeting. Thank you very much, everyone, I know this was a long meeting but I think we got a lot of information out and I appreciate everybody's participation and patience during the meeting. Thank you very much.

Attachment 2



December 10, 2020

To: Public Defense Services Commission
Lane Borg, Director

From: Keren Farkas, OPDS PCRCP Manager

Re: Parent Child Representation Program (PCRCP) January 2021 Contracts in Benton, Clatsop, Douglas and Polk Counties

Motion: Move to approve PCRCP Contracts in Benton, Clatsop, Douglas and Polk Counties

Overview of the Issue: In Spring 2020, OPDS entered an interagency agreement with Oregon's Department of Human Services (DHS) to access federal IV-E matching funds. During Summer 2020, the legislature authorized OPDS to use \$4.5 million of our projected matching funds before the conclusion of this biennium. Following the intent of the federal title IV-E reinterpretation – to improve representation for children and parents in the child welfare system - OPDS' Management Team decided to use an appropriate portion of the authorized funds to expand the PCRCP Program into four new counties.

Over Fall 2020, OPDS' PCRCP/Juvenile Team worked towards implementing PCRCP in Benton, Clatsop, Douglas and Polk Counties. OPDS issued a Request for Qualifications (RFQ) for interested attorneys and case managers on October 22, 2020. Following a deliberate internal review and assessment of the submitted proposals, OPDS has offered contracts to eight public defense providers who will collectively provide 18.4 Full-Time Equivalent (FTE) PCRCP Attorneys across the four counties. Each of the entities were offered additional compensation to cover administration/supervision responsibilities. OPDS has also offered contracts to two defense providers and nine independent case manager providers to collectively provide 6.35 FTE PCRCP Case Managers across the four counties.

We applied a uniform and consistent method to funding attorneys, case managers and administration/supervision. All providers were offered the same base rate for full-time (.8 or higher) case carrying attorneys and their corresponding staff. Using an informed working model, providers were offered additional compensation to meet the various administration and supervision responsibilities. All providers that proposed in-

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house Case Managers to develop the institutional interdisciplinary representation model were provided equal compensation for that resource.

Benton County

	Attorney FTE	Staff FTE	Case Manager FTE	Total Contract Value
Nash & Ortiz	.50	.50	0	\$135,482
Vidrio, Park & Jarvis	.50	.50	0	\$135,482
Largent Law, LLC	.80	.80	0	\$203,276
<i>Monica Morton</i>			.30	\$24,676
<i>Kristina Sexton</i>			.30	\$24,676
TOTAL	1.8	1.8	.60	\$523,592

Clatsop County

	Attorney FTE	Staff FTE	Case Manager FTE	Total Contract Value
Justice Alliance of Columbia County	1.8	1.8	0	\$451,608
<i>Jentry Wright</i>			.45	\$37,014
<i>Kristin Freund</i>			.30	\$24,676
TOTAL	1.8	1.8	.75	\$513,298

Douglas County

	Attorney FTE	Staff FTE	Case Manager FTE	Total Contract Value
Arneson, Styarfy & Stewart	3.0	3.0	.50	\$783,332
Roseburg Defense Consortium	4.0	4.0	0	\$947,792
Umpqua Valley Public Defender	4.3	4.3	1.0	\$1,112,876
<i>Nicki Golden Fox-Morse</i>			.30	\$24,676
<i>Kivonna Coccia- Gleghorn</i>			1.0	\$82,253
<i>Sadie Loosli</i>			1.0	\$82,253
TOTAL	11.3	11.3	3.8	\$3,033,182

Polk County

	Attorney FTE	Staff FTE	Case Manager FTE	Total Contract Value
Polk County Conflicts Cons.	2.5	2.5	0	\$696,795
Vidrio, Park & Jarvis	1.0	1.0	0	\$242,046
<i>Jodi Russell</i>			.70	\$57,577
<i>James Janoski</i>			.50	\$41,127
TOTAL	3.5	3.5	1.2	\$1,037,545

Background on PCRCP – The PCRCP is currently operating in six counties. Since implementation in 2014, the PCRCP has aimed to enhance the quality of representation of parents and children in juvenile court and, in turn, improve outcomes for families and children in the dependency and delinquency systems. PCRCP’s design, largely premised on Washington state’s model of interdisciplinary Parent Representation (PRP), utilizes proven indicators of high quality defense – including reduced caseloads (limited to 80 open cases), case manager social work intervention integrated into the defense team, and additional training and oversight - to serve parents in dependency and TPR proceedings.

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OPDS' PCRCP has demonstrated positive results, most notably expediting family reunification and reducing time spent in foster care, and garnered broad stakeholder support. Like Washington's PRP, OPDS hopes continued anecdotal and data-demonstrated benefits of PCRCP will garner the needed support to expand PCRCP to all Oregon counties.

Agency recommendation: OPDS recommends the PDSC approve the proposed PCRCP Contracts in Benton, Clatsop, Douglas and Polk Counties.

Attachment 3



December 16, 2020

To: Public Defense Services Commission
Lane Borg, Director

From: Heather Pate, Contracts Manager
Amy Jackson, Contract Analyst
Billy Strehlow, Contract Analyst
Caroline Meyer, Contract Analyst
David Orton, Contract Analyst
Megan Doak, Contract Analyst

Re: Public Defense Contracts – January 1, 2021-December 31, 2021
Notice of Intent to Contract

Motion: Move to approve Public Defense Contracts for the term January 1, 2021 – December 31, 2021.

OPDS has been working toward a new contracting model under the Commission’s direction since February 2019. Contracts went out to providers with the following parameters:

- FTE contracting model based on caseload
- 115% of NAC caseload guidelines
- Urban/non-urban designation (modeled after the highly regarded PCRFP model)
- Revenue neutral (as close as possible)

The table below shows the county, provider and contract value for this 12-month period.

Public Defense Contract recommended for Approval by the Public Defense Services Commission at its December 17, 2020 Meeting:

County	Proposed Contractor	Value
Baker	Eagle Cap Defenders	\$ 923,650
Benton	Benton County Legal Defense Corporation	\$1,318,706
Clackamas	*Juvenile Advocates of Clackamas	\$1,132,292
	Clackamas Indigent Defense Corporation	\$5,300,000
Clatsop	Clatsop County Defenders	\$1,320,532

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Columbia	Justice Alliance of Columbia County	\$ 313,500
	Columbia Indigent Defense Corporation	\$ 855,000
Coos	Coos Criminal Consortium	\$ 157,500
	Southwestern Oregon Public Defender Service	\$1,425,000
Crook/Jefferson	Twenty-Second Circuit Defenders CRO	\$2,346,500
Curry	Curry County Public Defense LLC	\$ 619,500
Deschutes	Deschutes Defenders	\$3,467,250
	Bend Attorney Group	\$2,005,925
	Kollie Law Group, PC	\$1,200,000
Douglas	Roseburg Defense Consortium	\$ 570,000
	Umpqua Valley Public Defender	\$1,803,000
	Arneson and Stewart, PC	\$ 190,000
Gilliam/Hood River/ Sherman/Wasco Wheeler	Morris and Sullivan	\$1,847,500
	7 th District Consortium	\$1,050,000
Grant/Harney	Strawberry Mountain Law	\$ 589,000
	John Lamborn	\$ 398,538
Jackson	Los Abogados	\$1,191,325
	Jackson Juvenile Consortium	\$1,457,905
	Rogue Valley Defenders, Inc.	\$1,085,750
Jackson/Josephine	Southern Oregon Public Defenders	\$5,411,766
Josephine	Josephine County Defense Lawyers	\$2,014,000
Lane	Public Defender Services of Lane County	\$5,035,278
	*Lane Juvenile Lawyers Association	\$1,753,602
	Lane County Defense Consortium	\$1,362,400
Lincoln	Oregon Coast Defenders	\$1,900,350
Linn	Linn Defenders Inc.	\$2,920,000
Malheur	Doug Rock	\$ 316,725
	David R. Carlson	\$ 390,628
	Stunz Fonda Kiyuna & Horton, LLP	\$ 686,238
	Stoddard & Dennison	\$ 459,800
Marion	Public Defender of Marion County	\$2,982,500
	The Juvenile Advocacy Consortium	\$3,220,038
	Marion County Association of Defenders, Ltd.	\$4,524,229
Multnomah	Multnomah Defenders, Inc.	\$5,019,692
Multnomah/Washington	Metropolitan Public Defender Services, Inc. MCR	\$15,155,556
	Portland Defense Consortium	\$2,460,000
Polk	Polk County Conflict Consortium	\$ 450,000
	Vidrio Park & Jarvis, LLC	\$1,214,113
Tillamook	Tillamook County Defense Consortium	\$ 570,000
Umatilla/Morrow	Blue Mountain Defenders	\$1,301,405
	Intermountain Defenders, Inc	\$2,087,500
Union/Wallowa	Eastern Oregon Defenders	\$ 929,575
Washington	Ridehalgh & Associates, LLC	\$1,019,840
	Cornerstone Law	\$ 950,175
	Oregon Defense Attorney Consortium, Inc	\$2,481,013
	Hillsboro Law Group, PC	\$ 900,000
Yamhill	Yamhill Justice League	\$2,100,000
Statewide Contracts	O,Conner & Webber	\$ 885,880
	Harris Matarazzo	\$ 253,980
	Youth, Rights & Justice	\$ 616,000
	OPC	\$1,835,316

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Death Penalty	Katherine O. Berger	\$ 193,200
	Jeffery Ellis	\$ 105,575
	Richard L. Wolf, PC	\$ 97,073

*Juvenile Advocates of Clackamas and Lane Juvenile Lawyers Association will sign 6-month contracts pending legislative action on additional funding.