

Mona Riesterer: All right, we are live.

Chair Jennifer Nash: Thank you. Good morning and welcome to the February 7th, 2024, virtual Oregon Public Defense Commission meeting. I'll talk slower and it might help. I'm Jennifer Nash, chair, and we will start this morning with public comment, but before we take oral public comment, I want to acknowledge that we received a number of written public comment. I usually list off the persons who've submitted public comment for the record, but I'm not going to do that this morning because there was such a significant number. So, the public comment will be appended to the meeting minutes. So, next meeting, the public comment will be attached to the minutes in the next meeting's agenda. And the commissioners did receive all of the public comment that was submitted through the deadline period of yesterday. So, thank you for all of your comments. And with that, I have two people who've asked to address the commission publicly this morning. The first is Lainey Block.

Lainey Block: Good morning. Can you hear me?

Chair Jennifer Nash: Yes.

Lainey Block: Commissioners, thank you for your service and the opportunity to comment. By way of introduction, I'm a former deputy district attorney. So, I'm familiar with the enormous caseload of the public defenders. I had over 300 cases, including Measure 11s when I left the DA's office. I'm also a former assistant attorney general under Hardy Myers in both the Appellate Division and special litigation unit. And in appellate, we handled post-conviction relief for ineffective assistance of counsel. So, as you all know, the state is either going to pay on the front end for effective assistance or for post-conviction relief. So, what I would like to ask you today, I also submitted written comments, is the Legislature is going to rely on your recommendations for funding for adequate public defense. And with the attorney general retiring, there is an opportunity to revisit the DOJ budget. Currently the attorney general's paid over \$30 million to a private law firm, it's the Markowitz Herbold law firm, to do work that's not in the public interest, sealing the records of foster care abuse. That was \$11 million according to OPB. And the Markowitz firm is actually currently defending the state in a class action brought by the Oregon Justice Resource Center for failing to provide public defenders. So, it's an ongoing issue, 22 million for Cover Oregon, which was a defective product that will cost the state millions to install. So, that 30 million, as you know, is about 300 public defenders.

So, I'm asking that you as commissioners recommend to the Legislature to review allocating DOJ budget moving forward. I cited to you a Brennan Center white paper. The new paper calls for reforms, funding to put PDs resources on par with prosecutor's office. So, this is a national best practice. The AG can

handle more work in-house. I cited to you that the DOJ has the third highest budget nationally per Ballotpedia. That's behind California and Texas, much larger states. And obviously there is need to engage outside counsel, but there needs to be parameters on outside counsel for reasonable budgets. You're not spending 11 million to seal foster care abuse over the objections of attorneys. So, part of your recommendations might be that our new secretary of state audit DOJ to see what can be handled more efficiently in house and what can be allocated moving forward to public defenders. And federal Judge McShane in his order, recent order, his quote in that order is a lasting fix will require both systemic change and legislative resolve. Again, your recommendations to the Legislature will be really important. And I think we've hit a tipping point. So, thank you again for the opportunity. I'm happy to answer any questions.

Chair Jennifer Nash: Thank you for your public comment. All right, next we will hear from Dawn Krantz-Watts who's also asked to address the commission.

Dawn Krantz-Watts: Good morning. Thank you for giving me a moment to speak. My name is Dawn Krantz. I'm a member of the Defense Investigators of Oregon and I am our union delegate. I was asked to speak today for my colleague, James Comstock, who has already written and sent in public comments. He is unable to speak today because he is traveling for an OPDC case, and he does not have cell service. So, you get me. Mr. Comstock raised concerns in January to OPDC meeting regarding the apparent lack of response from the Oregon Public Defense Commission regarding concerns about apparent duplicity by its staff. He highlighted a material misrepresentation made by OPDC staff to the commissioners during a vote on fiscal issues.

As of today, these issues have not been addressed despite being acknowledged by the agency. Mr. Comstock again urges the commission to take immediate action, including an independent investigation and public accountability for those involved in the misrepresentation. Mr. Comstock emphasizes the need for OPDC to regain trust by engaging with public defense providers with transparency and responsibility. He reiterates our concerns that despite the fact he has been asking agency staff to engage directly with investigators, despite that fact, the commission also directly asked the agency to engage with providers like myself. And months later, this has not occurred, and not for lack of trying on our part. We do not understand why the agency will not directly engage with us. We do not understand why they won't engage with us, which is forcing us to repeatedly come to these commission meetings and ask for a redress of our grievances.

Finally, I urge you to also carefully review the written public comments sent by my colleague and fellow union member, Laura Rittall. Ms. Rittall also highlights the communication problems between OPDC, the lack of response to promises

that have been made, and the deeply damaging problematic relationship we are building because of our lack of trust. Lack of communication results in your well-intended policy changes that ultimately create more work for OPDC staff and providers. Finally, we remain concerned that the agency has not published bill processing times since December 12th. That time is preventing providers from being paid and currently extends well beyond 40 days. Myself, I am at 45 days. We ask the commission to address the concerns of the defense investigators that we have raised through the written public comment without further delay and to hold those responsible for these shortcomings accountable. Thank you for allowing me to take James's place and speak on his behalf. He is speaking for my colleagues and myself that are part of the defense group. Thank you.

Chair Jennifer Nash: Thank you for your comment. And just, I do think it's worth noting that the issues raised in the January meeting regarding the policy research will be addressed today during the director's update. And we can talk about a different manner in which to communicate that going forward. But we do plan to address those, or Director Kampfe does plan to address those today.

Dawn Krantz-Watts: Okay, that's good to know. Thank you.

Chair Jennifer Nash: Thank you for your comment. All right, that concludes the oral public comment portion of the meeting today, and next we'll move to our action item. Taking a quick count. Yes, we have a quorum for voting. And the action item is to approve the January 5th, 2024, OPDC meeting minutes. Because we've moved to that, I will note that I spoke with Ms. Riesterer this morning about the issue of meeting minutes versus transcripts, which we've discussed in the old commission. And there will be, and there is a transcript that's actually been prepared of the January meeting. And that transcript was not included mistakenly in the meeting minutes but will be uploaded to commissioners' SharePoint and will also be published to the website so that it's available for the public. One of the benefits of having Zoom now, as opposed to Teams is that Zoom can auto-generate a transcript. So, that happens much quicker. And so we will have a transcript. The meeting minutes are prepared by Mr. Deitrick and Ms. Riesterer that are summaries of the transcript, but we've found in the past that it's helpful to also have the transcript available if the summary doesn't quite capture the exact wording of what discussion transpired. So, with that, is there a motion to approve the January 5th meeting minutes?

Alton Harvey, Jr.: So moved.

Chair Jennifer Nash: Alton, are you moving? Thank you. Commissioner Harvey makes the motion. Is there a second?

Rob Harris: I'll second.

Chair Jennifer Nash: Commissioner Harris seconds. Are there any voting members who oppose the... Well, I'm sorry, is there any discussion or any corrections that need to be made to the January minutes before we take a vote? All right, hearing none, are there any commissioners that oppose approval of the January 5th, 2024, meeting minutes? All right, seeing none, the motion passes unanimously of all the voting members. And the voting members present are Commissioner Lininger, Commissioner Nash, Commissioner Buckley, Commissioner Harris, and Commissioner Harvey.

Susan Mandiberg: I'm also present, Jennifer.

Chair Jennifer Nash: Oh, I'm sorry. Right there in center screen in the Hollywood Square, there you are, and I missed Commissioner Mandiberg. So, I'm sorry about that. Moving next to the budget presentation, Mr. Amador and Director Kampfe.

Jessica Kampfe: Thank you, Chair Nash, members of the commission. I'm Jessica Kampfe, Executive Director. I am going to hand this over to Mr. Amador and I'll be available to help support if there's questions.

Ralph Amador: Good morning, Chair Nash, members of the committee. This is Ralph Amador, the chief financial officer of the Oregon Public Defense Commission. And I have a budget update and a transition to a legislative update that Director Kampfe and Lisa Taylor will take over from me. So, Mona controls the slides. So, what you have here is a financial update. Can folks hear me okay? All right, I'll talk louder. They can't hear me, so. We have a update for you. This is through December of last year. So, what you see here is we are experiencing showing a small bit of savings and you'll see some stuff in red as we go through these things. There's not a lot to worry about at this point in time. We're putting forward a rebalance to meet some of the commission requests that need to be addressed in the Adult Trial Division. So, we'll talk about those in a little bit. Right now, we're looking at general fund authority savings of about \$4.8 million to this point and other fund limitation savings, which is associated with the folks that do the work for OJD for qualifying people, and it's in the court mandated expense area.

So, just to start, you'll see the Executive Division, CAP Division, Appellate Division. They're looking like they have some deficits, but those are because there was a COLA for all state employees that was passed, and we are recognizing those expenditures and those projections going forward. The legislative session will allow us to get that money that was put forward in the employee SPA, and in the subsequent months, those deficits will disappear. So, if there's any questions about what you see here, Adult Trial Division, Juvenile Division, I can answer those. And if not, we can move on to the next slide. So,

again, here you see we are showing some projected ending balances in preauthorized expenses, court mandated expenses. When I talked about the other funds for court mandated expenses, that 3.7, that's limitation right now. Other funds are limitation. And once we receive money from OJD, we get that money and we send it back to them and we recoup our expenditure, which is about \$800,000. So, that number will go down as we get money in and send money out.

And we're looking at the savings in the Parent Child Representation Program, and we are looking at a savings to Administrative Services Division. That is because of the money we haven't [Phonetic 00:16:22] projected to spend out for the FCMS project at this point. You'll see that there's a special programs, there's a projection, that is a projected overage because we are not really sure what we're going to get for discovery costs. So, we took a number for discovery, and we project that out and that will deteriorate over time as we get discovery cost actuals going in throughout the biennium at this point. Again, any deficits that are represented by staff will be recouped when we get money from the employee SPA that the Legislature will take care of at this point. Are there any questions with these categories?

Chair Jennifer Nash: I have a question. So, Chair Nash, for the record, for the pre-authorized expenses, it looks like other than the first month in July 2023 that we are consistently running over what we have budgeted. So, could you talk about what steps are being taken to address that projected deficit? Well, both the prior deficit and the projected deficit.

Ralph Amador: So, Chair Nash, good question. We're watching pre-authorized expenses and court-mandated expenses very diligently because that has to do with the THIP program because as we bring on more hourly cases and try to address those with hourly clients, those numbers go up. With pre-authorized expenses, those are very hard to predict because of the fact that when somebody requests a service through pre-authorized expense, they have two years to act on that and then they have two years to bill from that going forward. We're trying to change that policy and get people to start billing a little quicker on that so we can actually look at those things.

Again, with the pre-authorized expenses, those are the ones that we have like...we've approved about \$80 million of services subsequent to when they're active on. And again, we don't realize those until we get there. We're watching it diligently. We're asking for some rebalance. We're getting some money shifted around in the rebalance to accommodate some of this and with the additional money that we're asking for from the SPA to continue the THIP process, we will have money put in here as well. So, these are just things that we have to address, and they come as we can. But again, we have separate

codes for each individual area, rate structure for the THIP program. And again, that's really all we can do is wait and see and watch on these.

Chair Jennifer Nash: So, just to be clear, the pre-authorized expenses, those expenses are for outside contract and service providers like investigators, psychologists, those sorts of things, correct? They're not for attorney expenses.

Ralph Amador: Chair Nash, you are 100% correct on that. Those are for the, what we call the vendors and not the providers. Again, investigators, mitigators, psychologists, doctors, anybody else who would be supplementing the investigation of these cases.

Chair Jennifer Nash: So, the enhanced hourly rate for investigators from the Temporary Hourly Increase Program would affect that. But the other provider rates would be the same regardless of whether those people were subject to that program or not, right? Because contracted lawyers also use these pre-authorized expense services.

Ralph Amador: Chair Nash, that is correct. Everybody uses those pre-authorized expenses unless they have... Some of the not-for-profit [Inaudible 00:20:32] have investigators in-house, which are not authorized here, but all the other expenses do go through the pre-authorized expense category. And then attorney fees are in the court mandated expenses for the hourly attorney costs.

Chair Jennifer Nash: Okay, thank you for that clarification. And Commissioner Buckley, you have your hand raised.

Peter Buckley: Yeah, just a request, Madam Chair, thank you, that for agency staff and people who've been on the commission, acronyms make sense. For people who are just joining the commission or just listening, I'd just like to request to ask agency staff as well as the rest of us to not use acronyms instead of just referring to it as the THIP program. Thank you.

Ralph Amador: I understood Commissioner Buckley. And when I said the THIP program, I think Temporary Hourly Increase Program and we had talked about this before, that as we increased, we weren't budgeted for that to begin with to increase these hourly rates going forward. So, the court mandated expenses were projected to go over, pre-authorized expenses would go over because we're paying at rates higher than what we were budgeted for. Again, that's why we have these SPAs. I believe that's why there's SPA money so we can watch these as we're going forward. And we are requesting some SPA money to get somebody to catch up with this. And the longer we extend these programs that we're not budgeted for, we run into these issues. And I hope that that's clear enough. I'll expand on that more if you'd like.

Chair Jennifer Nash: And Mr. Amador, could you explain what SPA means?

Ralph Amador: Chair Nash, Representative Buckley. Yes, the SPA is a special purpose appropriation which is money that is set aside by the Legislature to handle a specific situation. We have several SPAs that were set aside for us in the previous legislative session to handle things such as the Temporary Hourly Increase Program, expenditures that are associated with a move to the executive division, and other public defense things as well that we're trying to anticipate.

Chair Jennifer Nash: And so just to clarify, that's money that the Legislature has already budgeted for the agency, but the agency has to come back to the Legislature and say, "We need this money now, and here's why we need it." Is that fair summary?

Ralph Amador: Chair Nash, that is the perfect summary. Yes, it is. And you will see these requests going forward in our legislative presentation.

Chair Jennifer Nash: Thank you.

Ralph Amador: If there's no more questions on the budget, then we can go to the last slide that I'm going to be talking about, Mona. So, there's a...

Chair Jennifer Nash: Just a moment, Mr. Amador. It looks like Commissioner Lininger has a question.

Ralph Amador: Yes, Mona, would you back up?

Tom Lininger: Mr. Amador, I'd be grateful to know if there is any possibility that the short session that's just underway might affect any aspect of what you're presenting. And forgive me that I don't follow that as closely as some other commissioners and staff.

Ralph Amador: Commissioner Lininger, Chair Nash, thank you for the question. Yes, there are actions that we are requesting in this legislative session that will reflect our financial overview. The issue with the financial overview is that we're about a month and a half lag on what happens just because of the way the system is. The month ends, they have to fix everything up, and then we don't get reports and stuff out till the end of the next subsequent month after that. So, you will see, as actions are taken by the Legislature, we will update this and reflect that on these sheets. But right now, there have been no actions taken. We've only put requests forward. So, again, once the session's done, they agree on stuff, they vote on things. They, meaning the Legislature, votes on certain things. We will add subsequent information to these sheets that will say this was approved and this is what the effect's going to be. We won't get funding for this probably

until March on some of these things, but the authorization will be there. Hopefully, that clears up the questions for you.

Chair Jennifer Nash: And there will be, our next agenda item is a 2020 for legislative session update. So, we'll get some more information about that process then.

Ralph Amador: Yes, ma'am. And last slide, Mona, for me. This is just to say that there's three distinct general fund appropriations for provider retention compensation. Senate Bill 337 appropriated \$9.9 million for the commission on a one-time basis for retention for recently hired and experienced public defenders. \$1.2 million is in Juvenile Division. \$1.2 million approximately is in Parent Child Representation Division. And there's \$7.4 million in Adult Trial Division. And those projections are included as being spent out in the information that I just provided for that. And there'll be more conversations about this later on in the presentations. So, that ends my part of the financial update. And if there's no questions, I thank you, and I'll turn it over to Director Kampfe and Ms. Taylor. Thank you.

Chair Jennifer Nash: It looks like Commissioner Harris has a question or comment.

Ralph Amador: Okay.

Rob Harris: Yeah, on the retention compensation, is the agency bound by that breakdown in the total 9.9? Was that in the budget so we are committed to that?

Ralph Amador: Commissioner Harris, yes. That is how it was distributed, \$9.9 million is the amount we were allocated for that in Senate Bill 337. And it was broken down by the Legislature to say \$7.4 million was to the Adult Trial Division, 1.2 to Juvenile, and 1.2 to Parent Child Representation so that all providers got a piece of the pie.

Rob Harris: Thank you, Mr. Amador.

Chair Jennifer Nash: I actually looked that up this morning myself, that is exactly right. Each one of the sections is adult trial, 1.11; juvenile trial, 1.12; and PCR, 1.14. Are there any other questions? All right, thank you very much, Mr. Amador, for your budget update and presentation. And now we'll move to the 2024 legislative session update, Director Kampfe and Lisa Taylor.

Jessica Kampfe: Thank you, Chair Nash, members of the commission. The 2024 Legislature has started this week and we've had the opportunity to appear in front of them yesterday. I'm going to turn this over to Lisa Taylor to run you all through the session update. Ms. Taylor, I cannot hear you.

Susan Mandiberg: Ms. Taylor, I cannot hear you either.

Jessica Kampfe: It looks like Ms. Taylor is putting on her headset, so I think she'll be able...

Lisa Taylor: Does this work?

Jessica Kampfe: Thank you. This is Lisa Taylor, government relations manager.

Lisa Taylor: Hi, I'm so sorry about that. So, yeah, Lisa Taylor, government relations manager. Yeah, as Director Kampfe said, we're in the first week of short session. Short session is only about a month long, so we will be done by March 10th at the latest. So, it's very quick. Deadlines pretty much approach every week or so. There is a cutoff to get to the next chamber or for a work session posting or something, so it moves very quickly. I'm going to go through our 2024 session requests. These are to access the SPAs that were just discussed, and our 2024 session requests really focus on three areas. The first is 337 implementation. This is for implementing Senate Bill 337 that was passed in 2023. We need some staffing positions and other investments just to make sure that we're able to hit those timelines. The next area is unrepresented persons, and I know that this is a priority of the commission so that we are asking for funds to continue things like THIP and other programs that are helping to mitigate unrepresented numbers. And then finally, it's robust administration, and this mainly has to do with the remediation plan that the commission has submitted along with just generally preparing to move to the executive branch as part of Senate Bill 337.

I really want to highlight the fact that all the requests are funded either through SPAs, special purpose appropriations, or through 2021-23 carry-forward. Carry-forward is money that was unspent in the last biennium. It isn't technically the agency's money. That money is a part of the Legislature, and Mr. Amador, please correct me if I'm misspeaking about a budget term. But for example, I believe the THIP program which they heard during January Legislative Days, LFO recommended the section that needed general fund that's being taken out of the '21-'23 carry-forward. So, it's not technically new money that they're investing. And I think that's really important because the Legislature did make a big investment last session and we tried to be really responsible with our request to make sure that we were using the money available to us. Next slide, please.

So, our first action is an agency-wide rebalance. This action is a net zero cost. So, we're not accessing SPA or [Inaudible 00:31:37] or anything for this. This is just us rebalancing money that is already within the agency. And the goal of this is to fully fund the two-year contracts with supervision, investigation, and training, as well as the 8.8% increase for in-house investigators. And then we get some funding limitations from the money that we got from the reimbursement for

Marion County discovery costs. The main line here is this budget rebalance in contracts. And this shows you where money's coming from and where it's moving to. So, we've worked really closely with LFO on this rebalance.

Chair Jennifer Nash: Ms. Taylor, I'm sorry to interrupt. If you could explain what LFO stands for, and also P-D-L-S-C L-A-B, if you could explain that as well.

Lisa Taylor: Absolutely. I apologize for the acronym. So, LFO is our Legislative Fiscal Office. We work, especially because we are currently in the judicial branch, and we haven't yet moved to the executive... Normally the executive agencies work through the chief financial office or CFO to build their budgets. Because we're over in the judiciary, we don't have that oversight. And so really our main oversight comes from the Legislature, and the Legislative Fiscal Office has been incredibly helpful to us in not just this rebalance, but many other aspects of our remediation plan and things. So, we've been working really closely with Legislative Fiscal Office to get to this rebalance. We really went back to very basic numbers of here's our contracts, here's how much those contracts costs, here's what that looks like when we multiply them together. Like very, very basic stuff to get to this rebalance. What we were trying to do in this rebalance was, again, to fully fund that two years of training, supervision, and investigation. So, as the contracts are now, making sure that those are fully funded through the two-year cycle. The PDLSC LAB is, actually, I may need help on this one, public defense... It's basically our contracts, and LAB is legislatively approved budget. So, what we've done here is the first row, the legislatively adopted budget, that's how much money we were given by the Legislature, and it's broken up by the three divisions of our programmatic areas. And then our estimated PDLC procurement, that's how much our current contracts cost for the two-year contract cycle. And so you subtract those numbers, and you're able to see the budget surplus or deficit, deficits in the parentheses, in each of those divisions. And then on top of that, we built in a small contingency, just so we're not budgeting down to the very bare minimum. We have a very small contingency built in. And then those numbers are added together to get the total budget resources available or needed.

And as you can see, Adult Trial Division with the two-year contracts is lacking \$8.6 million, but Juvenile Division has \$3.3 million surplus, and PCRCP has a \$3.9 million surplus. So, what we've done is we are requesting our rebalance, that that 3.3 and 3.9 surplus from Juvenile and PCRCP, Parent Child Representation Program, is moved over to the Adult Trial Division, which gets rid of most of the deficit in adult trial, but we also are moving over the \$583,000 from special programs, which is that repayment from the overcharge for discovery from Marion County, we're moving that over to adult trial. And then basically as a balancing number, we are taking 780,000 from court mandated expenses and moving that to adult trial to fully get rid of that 8.6 million deficit.

And so through those moves, we're able to fully fund two years of the contract. And that's, again, fully funding that two-year contract in all three of those divisions – adult, juvenile, and PCR. I've also got a message here that PDLSC stands for Public Defense Legal Services Contracts. And with that, that's our budget rebalance in a very... I'm not a budget person, so I think that this is how we'd describe it to non-budget people, and I think that's the best way to do it because we have to go present this to the Legislature. And I think as simple as we can describe it, the better. So, I would love feedback if you were like that... I don't know what you're talking about at all. But otherwise we can move on to the next one.

Chair Jennifer Nash: Are there any questions or comments or any, "I don't understand what you just said to me"? All right, perfect.

Lisa Taylor: Next slide then. So, this is our SPA access for our state trial offices and unrepresented persons. The first is for our public defenders in state offices. We're requesting additional funding for both overages that have occurred in the Metro and Southern Oregon offices just in setting them up, which also includes two positions for office admin staff. I think this overage is really just a factor of we had never opened a trial office and now we are doing that, and our initial guesses of how much that would cost were slightly off. So, we're asking for just some coverage in the overages there, as well as asking to open a Mid Valley state public defender office. So, this will be our third state office joining the Metro and the Southern office. And it will be opening serving the mid-Willamette Valley. It would be housed here in Salem. And that would include 10 full-time positions, which are 5 attorneys and their support staff. We also are making a request for unrepresented agency staffing. These would be agency positions for unrepresented individuals and other procurement efforts. This would fund seven positions, three of which are procurement staff and four are administrative positions. These costs are defrayed from the unrepresented SPA, the special purpose appropriation specifically for unrepresented numbers. And that SPA is mainly being used to set up that Mid Valley office, as well as expenses related to public defense, which is a kind of general use SPA which applies more broadly.

Chair Jennifer Nash: Commissioner Harvey, you have a question or comment?

Alton Harvey, Jr.: Yeah, thank you, Chair Nash, Commissioner Harvey for the record. I'm just curious, maybe this is a dumb question, but what's a trial office? What's the difference between a trial office and a regular office, attorney's office, lawyer's office? What's the difference?

Jessica Kampfe: Thank you, Chair Nash, Commissioner Harvey. This is Jessica Kampfe, executive director. Coming out of the legislative session, the Legislature authorized in Senate Bill 337 for the state to, for the first time, create state employees that are doing direct representation at the trial court on criminal cases. So, the state has for a long time had an Appellate Division where we have done direct representation with clients on their appellate cases in the Court of Appeals and in Oregon Supreme Court. And now we are, for the first time, starting to do that direct representation with state employees at the trial court level. This supplements the existing resources at the trial court level. So, we are now providing trial level public defense to Oregonians through contracted lawyers, hourly lawyers, as well as state employees. And so this is building out those first pilot offices of the state employees.

Alton Harvey, Jr.: Thank you, Director Kampfe, I appreciate that.

Chair Jennifer Nash: Commissioner Harris, you had a question or comment?

Rob Harris: A couple of questions on this. It'd be very helpful for me personally if when you broke these numbers down on the costs of these state trial offices, that you would talk about either annualized costs or monthly costs because you're talking like 15 months costs, 6.35 people, but we're hiring 10 lawyers. And it becomes somewhat confusing as I went over this, trying to figure out are these part-time lawyers or what's going on here? And then I divided by 15 and times by 12 to get an annualized number, but it would be helpful if we understood what these numbers meant more clearly. It took me work to try and figure out I think what they understood, that's number one. And maybe you know. What is the annualized cost for one MAC at one of your trial offices? Do you guys know that number today?

Lisa Taylor: Chair Nash, Commissioner Harris, I personally don't, but I think the agency does. I don't know if anybody has that number on hand and could get it, but we could certainly provide that to you. And I appreciate that feedback because you're absolutely right. This is the cost for the remainder of the biennium, which would be about 15 months, I believe. And that's why we are saying we're hiring 10 positions, but that equals 6.3 FTE because for the remaining 15 months of the biennium, that's how it works out too. And that's, again, just an issue of when you talk to the Legislature in budget numbers, that putting it in those terms makes sense, but I recognize we should make that clearer. And I'll be honest that the next slide about increased attorney capacity is even more confusing when we go from MAC to FTE.

Rob Harris: Yeah, and the other thing is in this slide, you talk about positions, but then you talk about attorneys and staff in other places. I would ask that you be consistent, and I would like it broken down by attorneys versus staff people. I

think that's very helpful to us to understand. Third comment is going to be I'm not sure who at the agency is in charge of setting these offices up, but I hope that they're talking to people in the local communities about costs and how to do this. I don't know whether anyone at the agency has frankly set up law offices, independently brand-new law offices, and I would urge you to get whatever expertise you need to bring on board rather than trying to do it all in house. No one could do everything in house.

And finally, I know that there's some set up costs every time you open up an office. You got to put deposits down, maybe you got some buildouts, you got some of these things to do. And that's a separate one-time cost, and it's a sunk cost and we all understand that. So, I would say I would really like to see going forward, because if this is the direction the agency has chosen and the Legislature has chosen to take is to move to these state trial offices, we should know what the actual cost is, and set-up costs should be separated out. Capital costs, sunk costs, one-time costs should be separated out from operating expenses.

And so if we see, oh, it costs you \$50,000 per attorney position as a sunk set-up cost, it's going to take you three months to get all set up on board. After three months, you're going to be operating, and this is the MAC, and this is the ongoing operating expenses. That would be very helpful going forward to know what the actual cost is going to be to this agency over the next 5 or 10 or several budget cycles, what the effectiveness and efficiency is going to be for the taxpayer dollars. Maybe even where the agency should be focusing on these offices to be set up where it can be efficient. Maybe we'll see, I don't think this is the case, but it's possible that you see that it's more efficient to do it in rural versus suburban versus urban counties. You're saying you're getting more bang for your buck, and it would help you focus on the buildout going forward. Or where it's simply not cost effective. So, I think this trial office information is extremely important, maybe not for today or this budget cycle, but it's very important as part of your long-range plan for us to understand what these costs are, and I'll leave it at that. If you have any questions, I'll be happy to chat with you offline on this as well. Thanks.

Chair Jennifer Nash: Thank you for your comments, Commissioner Harris. I'll just, by way of some background, and Director Kampfe can jump in on this, the former commission was briefed pretty extensively about this. And we have the breakdown and it's worth, you're right, getting that to the new commission as well, regarding the difference in cost for staff versus trial lawyers versus capital costs. And those are really informed by other agencies. So, the lawyer costs were DOJ related or appellate, I'm sorry, appellate lawyer costs. The capital costs were taken from DAS, real estate procurement, rents, etc. And I will say that my understanding is that the overage for the costs related to these offices are in large part because,

as we know, the budget proposals that we send in for the agency are sent in a year and a half or so before the actual passing of the budget, and there was an 8.8% COLA that was added in for all state employees by the Legislature, which immediately put the staff costs at least 8.8% under budget because the COLA was added after the budget was approved for the state level trial defenders offices. And then the real estate, it turns out, was more than was – because real estate rental costs have gone up – so it was more than was originally budgeted. And that's really what the bulk of the cost. It wasn't so much about, oh, we didn't anticipate we'd have to buy five computers. It was that costs just went up from the time it was approved to the time that we actually implemented the offices.

Jessica Kampfe: Thank you, Chair Nash and Commissioner Harris. I would also like to note that the agency is tracking all of these expenses in our spreadsheets, and so we would be happy to provide that information to the commission or to do a presentation on it as part of our March commission meeting.

Chair Jennifer Nash: And the other thing is the Legislature, of course the agency had input, but the Legislature really directed where the – well, not really, they did – direct where the trial level offices were to be opened, and that was directly related to where the highest number of unrepresented persons has been. So, you're right, Commissioner Harris, going forward. I mean, it makes sense for us to kind of do a broader study on that and make a determination as to where it makes sense to expand, but that's why it was Multnomah County area, the tri-county area, and that all Multnomah and Washington and then Jackson County and then now Mid Valley. Are there any other questions or comments before we move on to the next slide? All right, Ms. Taylor.

Lisa Taylor: Great, next slide, please. Yeah, thank you. So, this is our request to increase attorney capacity. We're requesting access to the SPA. It's the \$3 million caseload cost SPA. So, this is a special purpose appropriation specifically for increased caseload capacity. We're requesting pretty much all \$3 million, 2.9 and change million dollars, to fund 10 attorneys or 10 additional MAC in the Adult Trial Division for 15 months. And so this goes back to Commissioner Harris's concern about the MAC to FTE, which is always an interesting conversion. And I'm sure Director Kampfe could say more if we want to get into it, but basically while these will be 10 MAC, because they're starting partway through the year, they're not going to be able to take all 300 weighted misdemeanor cases. They're going to be able to take 15 months' worth of that. So, it works out to the 6.25 FTE. And based on that math, it yields about 3,700 unweighted misdemeanor cases.

I also will point out that initially when we briefed the previous commission on our rebalance, the goal of the rebalance was not just to fund the two years of

contracts, but we were also hoping to purchase more MAC through rebalance savings. After working very closely with LFO, it was determined that there weren't those savings, and instead we're just doing the rebalance, and the additional MAC capacity is coming through this SPA. So, I just want to acknowledge that the 10 MAC number was floating around in two different places, and this is where it's coming from.

Chair Jennifer Nash: Commissioner Harris.

Rob Harris: Thank you, Chair Nash. I think actually Ms. Taylor just answered my question with that last comment.

Chair Jennifer Nash: All right, thank you.

Lisa Taylor: Great, next slide. So, this is our request for strategic planning and transition. We're requesting 1.75 million from the executive transfer SPA, which has a total of \$5 million in it, to hire a strategic partner to assist in developing a strategic plan and in the agency's transition to the executive branch. I think we've really determined, and we've talked to the Governor's office about this and others, that the commission would really benefit from a dedicated outside consultant to help create that strategic plan for the commission and help manage the workload and ensuring milestones are met as we transition to the executive branch. Agencies don't move branches of government every day and having kind of a third party who's following us along the way to confirm that we are meeting milestones I think will be very beneficial to both the Legislature and the executive.

Chair Jennifer Nash: Commissioner Lininger, you have a question or comment?

Tom Lininger: Thank you, Chair Nash and thank you Ms. Taylor for your report. This is Commissioner Lininger, and I'm concerned about the amount of that expenditure for strategic planning. When I was preparing for this meeting, I had a look at other expenditures for our staffing for retention incentives, and this 1.75 million jumped off the page as being a very large amount dedicated to strategic planning. Now I'm new to the commission and don't know the background as well as others, but I wonder if you could explain why such a large sum is necessary for strategic planning. And I know that there's an SPA here and so the money's siloed for the executive transition, but it seems that that money could be better used in part for other purposes. Thank you.

Jessica Kampfe: Chair Nash, may I respond?

Chair Jennifer Nash: Yes, please.

Jessica Kampfe: Thank you, Chair Nash, members of the commission, Commissioner Lininger. The agency has not yet settled on a provider to help with the strategic planning. So, we are being conservative in our request. Once we finalize a contract, we will mitigate that number to what the agreed amount is, but we did not want to have to go back and ask twice. We didn't want to undersell ourselves on the front end and then not have enough money to cover the full cost of the contract. I sincerely hope we come in under budget and don't need to access all of that funding.

Chair Jennifer Nash: Are there any other questions or comments? All right, Ms. Taylor.

Lisa Taylor: Great. The next request is for agency staffing. This is 1.9 million for 11 positions which were identified through the gap analysis that we did as part of the commission's remediation plan. I'm sorry, I don't remember how much this commission's heard about the remediation plan. I know you got it last time, but it was a pretty short turnaround because you had just become a commission. So, just as a reminder, the remediation plan was directed through a budget note, and it's a plan that the commission's created in order to basically make the commission a mature and standard operating agency within the state system.

And we created that remediation plan. We've actually turned in our second iteration, which will be heard in the Public Safety Sub on Thursday. And as part of that remediation plan, we identified those 25 issues and then we looked at where those issues are and where we want them to be. And we identified what was missing in that gap, and part of that gap analysis was this identifying of 11 positions. This request was actually heard during the January legislative session, so it will be part of the omnibus plan. And it again, is defrayed by that \$5 million executive transition SPA. I'll also say that most of those positions were in IT needs and also administrative needs in both CAP and trial. I think we've discussed that the agency generally doesn't have as many administrative positions that are probably necessary.

Chair Jennifer Nash: And one of those administrative positions is an administrative position for the commission which I'll be really happy about because we don't have that. And there's only one administrative assistant for the entire agency and that's Ms. Riesterer, so that's part of the request. Commissioner Harris.

Rob Harris: Thank you, I just want to make sure I understand where the money's coming from, but it looks like you're going to add 11 positions and it's going to be at least in part defrayed by the executive transition SPA. Is that executive transition SPA one-time money? And if so, you're going to add 11 positions. I'm assuming these are permanent positions. Because I read the remediation, clearly needs them. I mean, it's clearly necessary but will that give the Legislature any heartburn? I mean, this is going to be a rolled-up cost.

Jessica Kampfe: Thank you, Chair Nash, Commissioner Harris. I'll try to take that question. It's my understanding, and maybe Commissioner Buckley can help with this too, but it's my understanding that when the Legislature expends funds during the short session, those funds then become part of our current service-level budget. And then for the following session they're built into the current service-level budget. If we were to access SPA funds after the short session concludes, like for example, if we were to go in front of an Emergency Board in the spring and access SPA funding, that would be a one-time expenditure and it would not roll up into our current service-level budget. But actions that are taken during the legislative session do become part of current service-level budget.

Lisa Taylor: Okay, and the next slide is for our THIP continuation. Again, that's the Temporary Hourly Increase Program. So, we are requesting 3.6 million to extend THIP through June of 2024. Again, this was heard during the January Legislative Days, so it will be a part of the omnibus bill, and it's being defrayed by part of the \$5 million unrepresented SPA as well as agency carry-forward. THIP is currently serving since October of last year. It is now dedicated to in custody unrepresented persons. And part of this continuation is the idea that as state employees get on board and they're taking more cases, there'll be fewer THIP cases for this program to take because those state employees are also targeting the unrepresented in-custody population. And that concludes my presentation. I do have a couple more attachments. One is a one-pager that I've put together for the Legislature that kind of summarizes our requests into those three categories of 337 implementation, unrepresented persons, and robust administration. And then the next attachment is a spreadsheet, it's green and white in your materials, that shows the requests and then breaks down the SPAs with the money available and the money being requested to show you how much is remaining. So, I'm happy to take questions on any of that or input on the one-pager or anything else you think would make it clearer when we're discussing this with the legislators.

Peter Buckley: It's a nice one-pager.

Chair Jennifer Nash: Thank you. Any other questions or comments regarding Ms. Taylor's presentation? Okay, before we move on to the next item, just a couple of other just general session updates just related to the commission. Yesterday was the first budget presentation regarding all the items that Ms. Taylor just talked about to the Public Safety Subcommittee. Today, Measure 110 is having a public hearing and there will be public comment. I will be giving public comment as a neutral participant on behalf of the commission, and we'll be providing only factual information. So, we don't have any governance-related decisions about the commission taking positions on bills. I also think, I mean, it's something we have to talk about, and it's also problematic. Well, I shouldn't say problematic. It

raises an issue because we have two legislators on the commission, whether we should be taking policy positions, and that's something we need to talk about as a commission and talk about related to governance. But I feel very strongly that we need to have a seat at the table regarding Measure 110. It's going to directly affect all of the providers, the lawyers, most importantly, our constituents. And I think it's important that we provide information regarding the impact that recriminalization will have on the public defense system.

So, I will be testifying this evening. That hearing's at five o'clock. It will be live streamed. You as individuals, if you wish, can submit written comment. There is a way to do that. You can go on the Legislature's website and figure that out and make your own pitches if you'd like to. And then tomorrow, the agency is appearing again in front of the Public Safety Subcommittee of Ways and Means regarding our three reports that the commission approved with the one paragraph caveat at the top of them in our January meeting, and we are presenting those reports tomorrow. There are additional...every Thursday because it's Tuesday and Thursday, actually, the Public Safety Subcommittee meets, and there may be other, I'm sure there will be, other opportunities for us to appear and give comment about various different issues throughout the session. It's a quick, as Ms. Taylor said, it's a fast-moving target. The Measure 110 issue is going to be very fast moving and already is. There are amendments that have been introduced, I think, twice already. And there are three different bills that are pending. One general bill that I think the House...joint bill, one House bill, one Senate bill, Democrat, Republican, different iterations of that. And we'll see how it all ends up in the end. Are there any questions or comments about that? All of these hearings, by the way, are live streamed. So, you can join anytime you want to and watch what's happening and you can watch them after the fact as well. All right. And with that, we'll move on to the Unrepresented Persons Update, Ms. Flowers. And Ms. Flowers, if you are speaking, we cannot hear you.

Shannon Flowers:

I was not yet. I always try to figure out the technology. So, I did not rely on Ms. Riesterer to share my slides, which maybe I should have, but I think I've figured it out now. I'm Shannon Flowers, trial support and development manager here at the agency, and I'm going to give you a little update on unrepresented persons and the work the agency has done in relation to that body of work. So, starting with the current numbers, as of yesterday, there were 2,751 unrepresented individuals, 136 of those are in custody, 29 of those the dashboard indicates have been in custody for more than 10 days. All of this data comes from the Oregon Judicial Department's Unrepresented Individuals Dashboard. That is the authoritative source of information and data about unrepresented persons at this point, and the information that we rely on in managing that situation.

This gives you, and this is also from OJD's Unrepresented Individuals Dashboard, just a high-level overview since the beginning of this dashboard, whenever this became the source for tracking data related to unrepresented persons in mid-August 2022 through yesterday. So, you can see the trends for various sort of categories of unrepresented individuals. The first graph there in the upper left is in-custody unrepresented individuals. To the right, then, is out-of-custody pretrial. Below is out-of-custody probation violations, and then all other case types that are not standard criminal cases. That includes juvenile dependency, juvenile delinquency, post-conviction relief, habeas, so the full gamut of cases.

And you can see that for in-custody individuals, there was a peak this past summer, and then that has come down and sort of stabilized over the last several months. We think that peak, it looks like it is associated with contract attorneys during the previous contract cycle nearing the end of the contract, and because of the contracting model last go-around, people were sort of reaching their annual caseload limit and then had no additional capacity under contract to continue to take cases. So, we think that peak there is associated with that. And then I'll talk a little bit about some efforts that we've made that we think have impacted that number coming down and stabilizing over the last several months.

This shows you just the breakdown for those cases. So, those are the cases as of yesterday that the dashboard indicates there are unrepresented individuals. The majority of those obviously are misdemeanor cases and lower-level felonies, so that's where we have the greatest need for additional attorney capacity. And then on the right, it shows you the breakdown by county where we are seeing the most number of unrepresented individuals. I'm happy to answer any questions as I go along if anyone has questions about the data, although my ability to respond to questions about the data since it isn't ours may be limited. But if there are questions, I'm happy to try to answer.

So, like I said, I wanted to talk a little bit about efforts the agency has undertaken, and this would really be over the last 18 months, to address the need for increased attorney capacity and to improve our management of the attorney capacity that we have to make sure that what capacity we have is being used in the most effective way that's possible at this point. So, our contracted attorney FTE, we've increased that by 25% over the last 18 months since July of 2022, which has been a huge improvement. Part of the efforts I think that have helped in that regard were the new attorney incentive and then the existing attorney retention incentive...to really recruitment and retention incentives. Those seem to have helped to not just add new attorneys but stabilize, at least anecdotally, what we have been hearing from a lot of providers, particularly public defender offices, the nonprofit public defender offices throughout the state, is that they aren't seeing the attrition that they

had been seeing prior to the last year, year and a half. So, things do look like they're starting to stabilize. We'll be looking at data as we can and talking with those contract administrators more to learn more about what has impacted that effort or those improvements in that stabilization of capacity so that we can replicate those things if we can in the future.

Another piece as far as managing the contract attorney capacity, and I think it was mentioned earlier during this meeting, is the prorating of contract MAC by month. So, under the previous contracts, people had a set limit for the year, and they were left to their own devices basically to figure out, do they take all the cases and then they're just done for the year, or do they sort of meter that out over the course of the year? The current contracts that we're in have provisions providing that if you're 300 misdemeanors or the weighted equivalent, that's what you have for the year, that would be broken down by month with some flexibility so that you're taking roughly 1/12th of that maximum attorney caseload each month. And that prevents us from getting to a cliff so to speak where all the contract capacity has been used up, and then we're left to try to fill a gap with hourly providers, whether those are contract attorneys or just attorneys who take cases hourly.

so spreading it out, as one of our program analysts put it maybe a year or so ago, it's a lot easier to find 15 attorneys spread out over the course of months than to try to find them all in a week or two. So, intuitively that just, I think, sort of makes some sense. We've also started some training efforts particularly for newer public defenders. So, the agency hosted Gideon's Promise in September, and then the other piece of that was a trial skills training that OCDLA, or the Oregon Criminal Defense Lawyers Association, we worked with them to provide those two trainings. It was a single cohort of just under 30 newer public defenders, and that's sort of targeting that those lower-level cases, bringing new attorneys in, making sure they have the support and training that they need. And we're looking currently to replicate that again. We were able to do that with grant funding that we worked with the Oregon Criminal Justice Commission to be able to put those trainings on. That's where that funding came from.

Then as far as workforce development, we have a workforce development workgroup that has subgroups and in particular, one of the focuses right now is workforce development in relation to non-attorney providers. So, legal assistants, paralegals, investigators, how do we build up that part of the system so that attorneys have time to do attorney work and are not spread thin doing lots of other things that are not necessarily their area of expertise. System efficiencies, we are on an ongoing basis looking for ways to improve the experience of public defenders in their own jurisdictions and especially when

they go to other jurisdictions and take cases outside of the jurisdictions that they typically work in.

One example of those efforts is a pilot program that we're working on and should have up and running relatively quickly now down in Southern Oregon in Coos County. I believe their Oregon Judicial Department had a couple of extra iPads that had been used for other purposes and are now being repurposed for this pilot so that attorneys are able to more easily meet with clients who are in the local jail, and they don't have to physically go to the jail because the distance and other barriers can be a problem sometimes with that. So, improving the flexibility and access for attorneys and their clients.

And then as has already been talked about quite a bit, the addition of state employees, I won't go into that a lot because it's already been talked about. And then finally, the major program that we have to address unrepresented persons is our Temporary Hourly Increase Program. It's gone through several iterations since it was originally started in August 2022. I can talk a little bit about what those iterations have been. It originally started as just an increased hourly rate for in-custody individuals. So, attorneys taking those clients and cases, then it was expanded to include an increased rate for investigators. Then it was expanded to all case types, whether a client was in custody or out of custody. We've gone through a couple of different iterations in the structure of the rates. And since October has been back to being limited to in-custody individuals, so attorneys will receive an increased hourly rate if they're representing somebody who's in custody, and their investigator that they hire to work on that case with them would also receive an increased hourly rate under this program.

Chair Jennifer Nash: And Commissioner Harris, you had a question or comment?

Rob Harris: Yes, thank you, Chair Nash. Ms. Flowers, on the training for new public defenders, you said there was a cohort of 30. I'm not sure why there was a cohort. Maybe that makes some sense, I guess. But how many of those new lawyers have jobs already? I mean, or had promises to jobs or positions? How many were in the nonprofit delivery system and how many were maybe either consortia or private law firms or maybe someone who moved to the state to get some training? Do you know the breakdown on that?

Shannon Flowers: I don't know the breakdown on that off the top of my head. I can work on getting those numbers for you. I believe that all of the individuals in the cohort either had a job in public defense or were set to start a job in public defense shortly thereafter, around the time of that first piece of the training in September.

Rob Harris: Because I think it's really important that as more than half of the case delivery systems in the state are not nonprofits and there's many rural areas and suburban areas that also have a need, many times, well, almost every time, their primary delivery system is the private bar, that the agency and OCDLA work together to make sure that you bring in people who maybe do want to work as an associate at a small law firm on the coast or in Crook County or someplace. And they also need this training, and they may not be part of a cohort from a larger public defense service firm, but I don't think we can forget them. And I think that this is important training, make it accessible and easy to do. And maybe you're doing that, but that's my only comment. Thank you.

Shannon Flowers: Yes, and I think maybe you're cueing off of my use of the term public defender. It was not meant to exclude any portion of the system. We had individuals in that cohort from all over the state in both consortia, nonprofit public defender offices, I think law firms as well. So, we really worked to build a cohort that would be representative of people doing this work throughout the state. And the reason to have a cohort was not just to get people training, but to try to work on building community amongst public defenders and particularly newer public defenders who probably often have the greatest need for outside support beyond just the firm consortia or public defender office that they're working in.

Chair Jennifer Nash: Commissioner Lininger.

Tom Lininger: Thank you for your information, Ms. Flowers. This is Commissioner Lininger. So, when I read about the Temporary Hourly Increase Program, and then I read that the projected duration is until, if I understand it correctly, June 2024, it makes me wonder why that's the end date. And if we're trying to create market incentives to meet the shortfall, I'm not optimistic the need for those incentives will disappear early this year. And I just wonder if you could talk or anyone could discuss what we're looking for to end the duration of those incentives, the hourly increase. Thank you.

Jessica Kampfe: Chair Nash, this is Director Kampfe. May I take that question?

Shannon Flowers: Yes, please.

Jessica Kampfe: Thank you, Chair Nash, members of the commission, Commissioner Lininger. The reason that the temporary increased rate program is set to expire in June is twofold. One is budget. And so we are asking for access to a special purpose appropriation, as well as to some general fund dollars, which we expect would be covered with our carry-forward in order to fund the program through June. In June, there is an Emergency Board that the Legislature has. And so if there is an ongoing need for the program, we could return to the emergency board and

ask to access money that is remaining in those special purpose appropriations if we need to extend the program beyond June. But we are aligning it with the opportunities to talk to the Legislature about what that ongoing need looks like.

The second reason that it is set to expire in June is the buildup of the state trial level public defenders. So, those offices that are coming online, their mandate is to mitigate the unrepresented persons crisis and to accept appointment for individuals who have the greatest liberty impact. So, that's going to be the folks that are in custody and unrepresented first in the communities where they're getting set up. As we see those offices start to thrive and take on more clients and provide representation to more people, we expect the need for this program to wane. And so balancing that with the ongoing budget need, we'll have a lot more information in the spring about what type of an ask we would need to make if this program needs to continue past June.

Chair Jennifer Nash: Does that answer your question, Commissioner Lininger?

Tom Lininger: Yes, I'm glad to hear about some of the factors, and it sounds like this will be an ongoing discussion in assessing the need for the continuation and the possibility of getting more funds for the continuation. Sorry, I didn't realize I needed to comment to sort of close this part of the discussion, but thank you for your comments, Director Kampfe.

Chair Jennifer Nash: And just to put kind of a finer point on it, the discussions that I've been involved with with members related to Legislature, budget, etc., there's a I don't want to say expectation, but no one's going to be surprised if we come back and say we need more money. It's just really the former commission didn't want to extend this open-ended; we don't know how much it costs, but just given all this money situation. But everybody knows that this is the single most effective program that we've had to mitigate this issue. And so if we need more funding for it and we can demonstrate that it continues to be effective, I think that it's likely that we'll get more funding for it. Commissioner Reinhard, actually I saw Commissioner Mandiberg, but I don't know if she put her hand down. I don't see her anymore on my little screen.

Brook Reinhard: Yeah, she was definitely first if she wants to.

Chair Jennifer Nash: Yes.

Susan Mandiberg: I don't have a question any longer, thank you.

Chair Jennifer Nash: All right, thank you. Commissioner Reinhard.

Brook Reinhard: I just wanted to respond to Professor Lininger's comment as well, and question. Having temporary hourly attorneys does remediate the crisis, but I think my clearest analogy from representing so many clients with drug addiction issues is it's like methadone. It gets us to a point, but it's not a long-term solution when the agency is spending so much money on these temporary hourly lawyers up to \$200 an hour while simultaneously telling contractors you can't hire more lawyers at the lower rate you're paying lawyers. It's really hard to deal with. I have folks on my waiting list I'd like to hire for this summer that I can't because there's not funding available presently. So, I agree it's a really important program, and no client should be in custody unrepresented or out of custody unrepresented, but it's a really fine balancing act, and I don't see it as being sustainable long-term. And so I would have a hard time with beyond June, but luckily I'm not a voting member. But anyway, I just wanted to comment on that, thanks.

Chair Jennifer Nash: Thank you, is there anyone else who has any further questions or comments about this portion of the presentation? All right, Ms. Flowers.

Shannon Flowers: Thank you, Chair Nash. Just to follow up on Commissioner Harris's questions about the training, I got a little bit more detail. Of that cohort for that training, the two pieces of it in September and then in January, half of the cohort were members of consortia, and then about two-thirds were from rural parts of Oregon. We had 10 applicants selected from the Portland Metro area, 9 from the Willamette Valley, and 11 from rural areas, 11 of the individuals were from offices with fewer than 5 lawyers and 19 from offices with more than 5 lawyers, just to give you an idea of what that cohort looked like. This is from our dashboard for the Temporary Hourly Increase Program, it shows up in the upper left the total program costs. So, this is what has been paid out through our accounts payable department to date. The program has served a total of 3,460 individuals in a total of close to 5,000 cases, 4,890 cases. I won't go into all of the graphs here, but it sort of gives you a breakdown in various ways of how those assignments and cases break down.

The last thing that I want to talk about is some of our process improvements that we've been working on over the last month to six weeks. The agency receives a high volume of calls from unrepresented persons, their family members, friends, who a lot of times are just looking for information. They don't understand their status, they think that there's an attorney here at OPDC that represents them because OPDC is indicated on their paperwork. So, one of the things we've been working on is a handout for individuals to receive as soon as OPDC is appointed that will help them hopefully understand what their status is, what they can expect, and that sort of thing. And the idea is that we'll work with OJD so that judges or court staff can hand that informational handout to that person as soon as that appointment is made. And we're hoping that that will

reduce the number of calls because we're proactively getting information out to people, so they're not left to reach out to us to try to get information.

We're also working on the messaging within our phone system so that if somebody gets to a voicemail message because they are unrepresented, we'll include similar information as what is in the handout that they would receive in court, just to provide another way for people to get information until they can hear from somebody personally, potentially. And then finally, we're working on implementing a communication form for judges and court staff to use. Judges and court staff communicate with our unrepresented persons analyst pretty frequently. That's been all done over emails and phone calls and so we're working to develop and implement a form for judges and court staff to use to communicate those priorities, which should streamline things, improve our efficiency, and really help us, we hope, be able to focus staff time on actually making those case assignments and not all of the administrative work that goes around that.

And the one thing I will say too about the process improvement work that I think is a big win for the agency is one of the challenges we have had as an agency as a sort of siloing of different teams, people working independently and not always talking to each other. These efforts have involved the trial support and development team that I manage, our IT team, our data and research team. So, it's really a collaboration of a lot of different parts of the agency. So, it's been a really good effort and it's, I think, getting us to a much better place with our processes that were developed to address unrepresented persons. We've talked a lot about flying the plane while you're trying to build it. To date, that's very much what this has been. So, now that things are stabilizing a little bit, we have a little bit more breathing room, we're taking the time and energy to work on improving those processes so that we can build in some efficiency and focus staff time in the best way possible.

Chair Jennifer Nash: Thank you. Commissioner Buckley.

Peter Buckley: Thank you, Madam Chair. Ms. Flowers, are these communications in multiple languages?

Shannon Flowers: Yes, thank you. Commissioner Buckley, I apologize. I meant to include that piece. We are working to have the handout translated into Spanish. The top five languages that I believe OJD, DHS, sort of all state agencies typically try to have materials translated into because we know that the unrepresented persons population, not everybody speaks English, or their friends and family members may not speak English. We want to make sure people have as good of access to information about their status and their situation as we possibly can provide.

Peter Buckley: Thank you.

Shannon Flowers: That is all that I have. I'm happy to answer any questions that I can try to answer.

Chair Jennifer Nash: Are there any further questions or comments? All right, I don't see any. All right, so we are at 10:30. We're an hour and a half into the meeting. The meeting is scheduled to last from 9:00 until 1:00. The items on the agenda only compromise a little over two hours. I think they are going to take up the entire time. Just looking at our agenda item, there's only been 15 minutes that's allocated to the next item on the agenda, and I think it's going to take much longer than that. And we have some other significant, at length, I believe, presentations.

And I'm wondering, I'd like to hear from other commissioners at this point, whether you would like to take a break, A; B, whether you want to take it now; or whether you want to wait and take it after the \$9.9 million retention incentive policy briefing. If I could hear from folks, that would be great. Okay, how about you raise your hand? Anybody want to break now? All right, I have two people, three people. No, okay, two people. Do we want to do that now? Do we want to take a break or take the break out? If I were to guess about our next item, I'd say we're going to be at least 30 minutes and maybe 45 minutes for our next item to give commissioners time to fully discuss it. All right, I guess this is where I get to decide. So, we'll take a quick break at this point, 10 minutes because as I said, I think we're going to be pretty lengthy in the next one, next item. So, let's be back at 10:40. That's nine minutes. Let's be back at 10:40 for our next presentation. Thank you.

[No dialogue]

Chair Jennifer Nash: All right, it's 10:40. I'm ready to start again. Does Mona have to start or are we rolling?

Jessica Kampfe: Chair Nash, I see the recording symbol is on, so I think we're rolling.

Chair Jennifer Nash: All right, perfect. Thank you. Welcome back from our break. It is 10:40 and we will resume the Oregon Public Defense Commission meeting by starting with the presentation regarding the \$9.9 million retention incentive policy briefing. Ms. Jackson, Ms. Freeman, and Director Kampfe.

Jessica Kampfe: Thank you, Chair Nash, members of the commission. Coming out of the last legislative session, the Legislature allocated \$9.9 million in funding to the agency for retention incentives. During our earlier budget presentation, you saw the breakdown of how those funds are allocated. The agency has done a significant

amount of work to prepare a policy for your consideration about how to expend those funds. My expectation is that this is going to be a briefing from the agency with regard to that policy. I know that there is a lot of public interest and engagement on this topic, and I would anticipate a lot of commission interest and engagement on this topic too. So, I hope we can have a robust conversation today. We will follow up with providers, and then this will be back in front of the commission next month for a vote. So, today is a discussion, not a voting day. And with that, I'm going to turn this conversation over to Kim Freeman, who is our compliance, audit, and performance manager, as well as Amy Jackson, who is a policy writer in the agency.

Kim Freeman:

Thank you, Director Kampfe, Chair Nash, the commission members. My name is Kim Freeman. I am the CAP manager, which is compliance, audit, and performance. I know earlier today, you've heard a lot about CAP. So, all of that CAP work relies and lives within my team. Thank you to Ms. Riesterer, who is going to be my co-host for the PowerPoint presentation today. With that, Mona, go ahead and go to the next slide, please. So, I want to just share some information with the commission around what our current processes are around our monthly caseload reporting, a little bit about our contract term, looking at the new due dates that are proposed in the policy, some current disadvantages of not moving the dates, and then also what engagement that we have been doing with our current contractors around caseload reporting. And so I'm going to share some of that throughout this presentation. Next slide, please. Oh, next one, sorry, Mona.

So, currently, our caseload reports are due on the 20th of the month. This is in our contract, and it is a contract term. This reporting due date is over 23 years old. So, there's just a little context history here. As our technology has advanced, our providers have the ability now to actually upload their CSV file. And you're going to ask me what that acronym is, and I should have had that, so I apologize, I don't have that. But they can upload their file to our website through Nintex, and that's an ease of getting that information to us. So, then our data and research team can take the caseload reporting and utilize it in our dashboards, and it's a way for us to utilize the data. Next slide, please.

And this is just a visual. So, with reports that start February 1, then they're due at the end of the month. Then a provider or a contractor has until March 20th to get us their report. So, it's over 20 days past due. The data is old by the time we get it. We understand that there are limitations with some of our providers in obtaining the information from the courts. So, the current reporting structure allows our providers to make sure that their report is as accurate as possible before it's submitted to OPDC. With this timeline and the current structure, we cannot speak to real time of what the attorney capacity is with this current structure. We work hand-in-hand with our providers. Our trial support

development team, along with our program analysts who work directly with the contractors, are in communication, but we still, based on data, cannot speak to real time of our attorney capacity. Next slide, Mona.

Some advantages of just moving our reporting date up to the 5th. This allows us a preview of the preliminary capacity in each jurisdiction by the 5th of the month. So, again, it's just quicker review of where our providers are. We can make real-time data-informed conversations with our contractors, the Oregon Judicial Department, OJD, and/or the court. It helps us to identify and acknowledge the needs in a jurisdiction by case type, which is like major felony, murder. Again, it just allows us to have a real-time knowledge of what's happening in each jurisdiction because as the commission knows, every jurisdiction is different and has different needs. But more importantly, it ensures clients are provided with appointed counsel that they need, and we can ensure that our contractors have the ability to take on those cases. But within reason, so they're not taking more cases than they ethically should be. Next slide, Mona.

And then a little bit further conversations, as the commission is aware, Senate Bill 337 does require OPDC and OJD to work with DAS, and DAS is our Department of Administrative Services. And we're working currently on establishing a forecast for persons eligible for court-appointed counsel. So, again, ensuring we have data will help us work with OJD and DAS to help with the forecasting. As we move into the executive branch, this is a requirement as we move forward. With the data as well, is we can compare what we've been forecasting by the quarter because we're going to do this on a quarterly basis, what's been forecasted by quarter, looking at what's been contracted by quarter, and then what we've actually utilized in the quarter. So, this should again, help us with our financial forecasting but also with our contractors and ultimately ensuring that we do have capacity to help all persons who are eligible for appointed counsel.

So, okay, what's DAS? DAS is the Department of Administrative Services. They are in the executive branch here at the state, and so they have all of our policies. They are the administrative agency over all state agencies, and they work very closely with us. So, I hope that answers Commissioner Harvey's question. And then also early case reporting will help OPDC in our future budget processes as well. Okay, perfect.

And then some disadvantages if we keep to our current structure, right? We're unable again to speak to attorney capacity as the reports are at least... They come in 20 days after, so it's just the data is not as current as we would like. Again, we can't speak to real-time data-informed decisions. We are relying on our contractors for self-reporting, and so we're working on some things

internally as we're able to increase capacity. We will be working on verification of the reports that come in. And by not having data from our contractors, it allows OJD rather than OPDC to speak to contractor capacity. Next slide, please.

Now, what have we been doing for our contractors? We have been conducting office hours, and we will be holding a feedback session. So, I'm going to give a shout out to the data team. They have asked and we are graciously hosting caseload reporting office hours. So, the first three months of 2024, so January through March, the office hours are specifically for caseload reporting conversation. So, we have an established agenda, the website link is listed here, so it has all the meeting dates, it has the agenda. And we are also posting the recording. So, if a contractor has missed one of those meetings, they can go back and listen to the recording as well. From those meetings, if there's a contractor whom needs an individual caseload reporting assistance, the data team along with the contractor's assigned program analysts meet with them either virtually or in their office. Again, we're trying to make sure that all of our contractors have the resources as much as OPDC can help them to ensure that their caseload reports are accurate and submitted in a timely manner. Next slide, please, Mona.

Also internally, we are meeting on a regular basis, the data team and the program analysts. As you heard Ms. Flowers speak earlier, there is a lot of what I call cross-collaboration, cross-sectional work that's happening within OPDC, ensuring that we're bringing the right teams, people, individuals into these conversations. Again, breaking down silos. Both teams are working incredibly well. They're brainstorming on new efficiencies and how some of our reports can help further work with each team and more importantly with our providers. We will be continuing office hours for the rest of the year. In April, we will change our focus. It won't be based on caseload reports. It will be other topics, like we may bring in our accounts payable section. We could have a session wrapping up what happened in the short session of the Legislature.

But then we're also going to ask our providers and contractors, what areas would you like to have an office hours topic on? So, it's not just OPDC coming up with topics. It's also what our providers and contractors would like to know about. We are working on some public-facing dashboards. This area is an area that we want to ensure that we can protect of just having sure that our contract administrators have access to the dashboards. There'll be more to follow, and our goal is to be sharing this out with the commission, but right now we're working on some technical challenges to ensure that we can keep that information in a secure manner to only our contract providers.

In reference to the policy that you'll be hearing, and we'll be discussing in a little bit, we also have a feedback session scheduled for Tuesday, February 13th, at

noon, noon to 1:00. And the link is provided here as well. It's also located on our stakeholder engagement page of our website, along with our news and media page. But also a direct communication was sent out. I think Mona, that's on my next slide, so I'm probably jumping ahead. Yeah, so we did. Again, the trial support and development team sent a communication to all contractors on January 24th, ensuring that everyone is aware of this policy because we know not all of our contractors, providers tune into the commission meeting. So, we want to make sure we're communicating out. So, they were sent our proposed policy, the commission memo, and the date and the link to the feedback session.

Also in that communication, we provided an email address for people, providers to send in comments. And as of yesterday, we have received nine comments, which all have been sent to the commission members as well. I've broken them down by topics. So, we had two of them around FTE. So, that's full-time equivalent for staffing. So, they were referenced on making sure is the calculation in the memo, did they understand that's how we're calculating? So, they could then calculate the amount of funding that they would receive? We had four questions from contracts in reference to contract administration questions. Some of those were from consortium members where an example would be if they had 10 attorneys and only 9 submitted, would they be eligible for our quarterly incentive pay? And the answer would be no, we would need everyone to participate to receive that money if that's how this policy is approved. Then we had three that truly did not support this policy, and the reason for the non-support is because of cases that are assigned towards the end of the month, they don't have all the information from the courts. So, they feel that they cannot provide an adequate data report by the 5th that is valid. Could they get us a report by the 5th? Yes, but it may not be as accurate as it would be if it was submitted by the 20th. Next slide, please.

Oh, there I am. So, at this point, so I'm at the end of my presentation and it's really just to give you some history of kind of where we are, thoughts around why we're looking at the 5th for some early reporting incentive pay, how you have the proposed policy in front of you. And then I'm going to turn it over to Ms. Jackson. I see Commissioner Buckley has a question. And so when he's done, we'll turn it over to Ms. Jackson to share the policy with you. And then as Director Kampfe said, we are here to have engagement and conversation and we will be busily taking notes and answering any questions that you may have. Thank you.

Chair Jennifer Nash: A couple of things, just I want to note for the record that Commissioner Parrish Taylor is here. Thank you and welcome, Commissioner Parrish Taylor.

Jennifer Parrish Taylor: I've been here, but just in the webinar session, just finally y'all can see me, so happy to be here.

Chair Jennifer Nash: Well, it's good to see you. And then Commissioner Buckley has a question.

Peter Buckley: Thank you, Madam Chair. I'm assuming that Ms. Jackson and her colleagues will tell us why this applies to the retention funds. So, I look forward to that discussion. And I just want to make the request again, of the nine people that have corresponded, will those nine people get a response directly back, a personal response back? I do think that's something that we really have to make a regular practice that when someone communicates with the agency or the commission, that they get a response back to their communication. So, I'm asking will those nine people get an individual response back to their communications?

Amy Jackson: Thank you, Commissioner Buckley. I personally responded to, I believe, six of the nine responses that came in. Just as late as yesterday afternoon, I was on the phone with someone explaining how we decided on the actual amounts. So, I will confirm that all nine have been responded to.

Peter Buckley: Thank you.

Amy Jackson: So... Go ahead.

Chair Jennifer Nash: I was just going to say, I just wanted to provide a little bit of information to help frame the discussion going forward. And I just want to read what's in Senate Bill 337 specifically related to the retention payments, so we know what the statutory authority is. And what Senate Bill 337 says is that the \$9.9 million is allocated as a one-time incentive compensation for the retention of both recently hired as well as experienced contract providers. And that language remains consistent throughout 337 in terms of the background information, the budget information, the information presented to Ways and Means. And then as we've already talked about, the specific dollar amounts were allocated in the final bill as we previously discussed. So, there was no guidance regarding how it was that this \$9.9 million was to be paid out. That's the information that is in the legislation. Commissioner Harris.

Rob Harris: Quick question. I think I know the answer to this, but perhaps other people don't, or perhaps I'm wrong. But are the current reporting periods part of the contracts that were signed seven months ago? Isn't that a specific term of the contract? So, wouldn't this actually be a change or an amendment to the contract term?

- Amy Jackson: Yes and no is the answer to your question. Yes, it is a contract term that reports are due by the 20th of the month. This is not a change to that because this is voluntary participation. People don't have to choose to participate in this program, but they certainly can.
- Rob Harris: Frankly, I find that a bit disingenuous.
- Amy Jackson: With the exception of the first payment, I would say. The first payment is not tied to anything. It's the subsequent payments that are.
- Chair Jennifer Nash: So, I will, related to that, just say that I also looked at... So, Ms. Freeman read us the contract term or had it up on the screen, and it said that reports are due the 20th of the month pursuant to the caseload and workload reporting policy. We don't have a caseload and workload reporting policy, at least as far as I can tell. So, there's been no commission- or agency-adopted caseload and workload reporting policy. So, I've added that to the list of work we need to do, but there isn't one. Commissioner Lininger.
- Tom Lininger: Thank you, Ms. Freeman and Ms. Jackson. I would be interested to know more about why we have a differential compensation rate that we multiply by FTE for different categories of attorneys. It may be something as simple as we had sort of discrete pots of money for each category of attorney, and we just did the math and that's how you allocate. More fundamentally... By the way, I do appreciate your concern to obtain data. I think that's valuable for us on the commission, and I think that's what the Legislature intends. So, thank you for your attention to that priority. But I guess my more fundamental question is what possible means of providing retainer payments did you consider and reject in favor of this policy? I'd be interested to know that. Thank you.
- Amy Jackson: Mm-hmm. Thank you, Commissioner Lininger. I can answer the first question, and it is that simple. Budget and finance took the three pots of money and then took the FTE associated with each of those buckets, which is X number of FTE for criminal, X number for juvenile, the same for PCR, and then divided it. So, that's why you have different amounts for the three different buckets of money. With regard to what we considered, there were lots of considerations that were originally thrown out, including doing what we did last time, how we could get something different and improve the overall functioning of the agency. But I really think that ultimately this boils down to how can we get something for this that is measurable on the other end, okay? As I understand it, we're going to be asked to come back and demonstrate what we got for it. And this came to the top of the list as to things that we could potentially solve.

Chair Jennifer Nash: It might be helpful for Director Kampfe perhaps to explain how, when we had prior money from the Legislature for retention and incentive payments, the commission decided to allocate those funds.

Jessica Kampfe: Thank you, Chair Nash, members of the commission. Last year, the Legislature allocated funds from the Emergency Board to the Public Defense Services Commission for the purpose of retaining lawyers. The commission made a similar calculation in terms of dividing up the money by the number of FTE and making those payments awards tied to that FTE. And we tied the award of the money to caseload reporting. It was for the reporting date on the 20th, but in order to be eligible for the retention incentives, providers had to submit their caseload reporting by the 20th of the month. Prior to putting that policy into place, we had very inconsistent caseload reporting from providers. And I will say that having been on the other side of this equation, I know how difficult it is and administratively burdensome it is to do the caseload reporting. I was at a larger firm that had a full-time staff person that was doing caseload reporting, and I know that that is not a luxury that a lot of our provider communities have. So, I don't want to underestimate the administrative work that is involved in providing caseload reporting to the agency.

But we had very inconsistent caseload reporting before putting that policy in place. Once we did put it in place and it tied it to a retention incentive, the quality and quantity of our caseload reporting improved significantly. That policy was one time in nature. Those funds expired at the end of last year, and we've seen caseload reporting diminish now that there's no longer any financial incentive associated with it. That is a real challenge for the agency because we rely on those caseload report numbers to be able to determine how much capacity we have within our public defense system, and to do things like forecasting where we need additional public defense resources as well as our budget forecast. And so because it was successful to tie to the caseload reporting previously, we looked to align it similarly. This particular policy goes a step further than our last policy did, and that is that it moves the reporting date. And I think that is probably the thing that is giving a lot of people consternation because it does mean that work that folks had three weeks to complete would now have to get completed in one week, and that's a big change for business practices, and it means doing the same amount of work in a shorter period of time, and that is resource intensive. So, I'm not surprised to hear this feedback from folks, but that is the history.

Chair Jennifer Nash: Commissioner Wright.

Jasmine Wright: I guess, and I think other people have alluded to this, but I guess I'll ask it outright, is the purpose of this incentive bonus was to retain attorneys. So, I guess I just want an explanation outright as to how early reporting of these

numbers directly correlates to retaining attorneys and how the agency has from a logical perspective directly tied early reporting of statistics to retaining of attorneys. I think I know where that's at, but I think we need to hear from the agency specifically how pushing providers to do this 15 days early is going to retain attorneys.

Jessica Kampfe: Thank you, Commissioner Wright. So, there's a number of considerations here. One is because our data is older, it's not real-time in nature currently, the Oregon Judicial Department does have real-time data on caseload reporting. And that means that they are using their data to assess attorney capacity in real-time in ways that eventually lead to OJD managing public defense contracts, quite frankly. And so by starting to build our own capacity to manage our contracts, we can speak to what public defense capacity is. We can provide that information to contract administrators so that they can meet with their local presiding judges and their public safety communities and talk about what the public defense resources are in their community so that their public defenders don't become overburdened and not able to manage ethical caseloads. And we have seen for years that people have been leaving public defense because their caseloads are too high, and their compensation is too low. And so we want to empower public defense administrators and public defenders to have the information that they need to be able to make assessments about what their capacity is so that they can have ethical caseloads.

Another way in which the early data reporting is aimed at retaining public defenders is through building out our forecasting and our budget process. We cannot ask for additional resources if we don't know what our capacity is. And so we need to be able to have accurate forecasting as we move towards the '25-'27 legislative session so that we can ask for the investments that we need to be able to build a sustainable public defense system. We also need a way to measure that people are actually continuing to stay in public defense throughout the period of the retention payments. That isn't necessarily about early reporting, but we do need to tie it to having the person continue to be there for a period of time. We did that with our last retention incentives as well.

Jasmine Wright: Director Kampfe, one more question. I'm sorry to jump in for the second question, and this is specifically to you. I guess my other question is this \$9.9 million was authorized some period of time by the Legislature. And we are just now rolling out a plan, where we're just now talking about how we're going to roll this out, and how we're going to distribute this. And we're just now having an initial conversation about how this is going to happen, and we're having significant pushback from providers about this. I would like you to talk about and discuss about why there was such a delay from the agency's perspective,

essentially why there was such a delay here and in terms of where the priority was with the agency and kind of talk us through that.

Jessica Kampfe: Thank you, Commissioner Wright. This money was allocated to the agency by the Legislature in July of 2023 at the close of the legislative session. At that time, we got a lot of direction from the Legislature about many things that the agency needed to accomplish, and we had also our existing contracts with providers expired on June 31st of 2023, and we went into a three-month extension period where we worked to secure new contracts with providers. So, the scope of work that the agency was facing throughout the summer was enormous, continues to be enormous. But in terms of what we were able to accomplish, we couldn't do it all at once. We first had to get our contracts stabilized and in place. We wouldn't even know how many FTE we were contracting for people to provide until those contracts were stabilized and in place, and that took us through October of 2023. We then needed to put into place a regular reconciliation process for timing when we reconcile the number of FTEs that are under those contracts, and we've settled on doing that quarterly. The next reconciliation of those MAC under the contract will be at the end of March, which is why the payment policy is for the first payment to go out in the middle of April.

In addition to all the work that we were doing on the contracts front, this summer we were mandated to work with the Oregon Judicial Department to create crisis plans to address the unrepresented persons crisis and had deadlines on those crisis plans in late summer and early fall. Also during that same time period, we were working to transition our commission and our agency from the Public Defense Services Commission to the Oregon Public Defense Commission. And so there has been an enormous amount of work for the agency to do. This has remained an important piece of it, but we needed some other bits to settle first before we were able to move forward with this.

Jasmine Wright: Thank you, Director Kampfe. Those were very important, very helpful updates. Thank you so much.

Chair Jennifer Nash: Commissioner Mandiberg.

Susan Mandiberg: I understand and I agree with Director Kampfe that the administrative burden to get these reports in varies a lot depending on what kind of administrative support a provider might have. So, a question I have is whether the delinquency or the backlog in meeting the current reporting dates varies by the type of provider. For example, we've got the nonprofits and we've got consortia and we've got individual providers who are associated with a consortium. Are there differences among those types of providers in their current ability to get data in on time?

Jessica Kampfe: Thank you, Commissioner Mandiberg for the question. I don't have an immediate answer for you, but that's something that we can look into and have available for the commission before the March meeting. I will say that as Ms. Freeman indicated, we have been hosting office hours for providers to work on caseload reporting, and those have been well attended and folks seem to be benefiting from those office hours.

Susan Mandiberg: The reason I ask is that it may be possible to vary the reporting requirements in some way based on the type of provider and linked somehow to the type of administrative support each type of provider may have available. For example, I gather from some of the public comments that one of the issues that consortia have is that some of the members of the consortium can get their data in timely, and other members, frequently the same members, don't get their data in timely. And if I misunderstood the public comments, I apologize. But the way it's structured right now, if a consortium can't get the data in on time because one member, for example, hasn't been able to comply, everyone in the consortium is penalized. That puts the onus on the director of the consortium to ride herd on the consortia members. So, that's a special onus for that director.

On the other hand, if it was structured so that each consortium member had to report independently to the agency, then the onus of riding herd on those providers would fall on the agency, and it would free up the consortium director from having to do that work. So, it seems to me that it's possible, and I don't know the ins and outs of how this would work at the agency level, but it seems to me it's possible that there could be more nuances in the way these requirements are structured to solve some of the problems that have been identified.

Chair Jennifer Nash: Thank you. Commissioner Reinhard.

Brook Reinhard: I really appreciate the comments so far from my fellow commissioners, and I also appreciate being able to hear from Ms. Jackson, and I'm sorry, I don't remember your name, but the other presenter, Ms. Freeman, on the policies that you're putting in, why you want to put them into place. It's not lost on me that these are really important things to do, and that data is one of the biggest reasons we're suffering in our ability to effectively ask the Legislature for more funds and to be accountable for what we have. So, with that in mind, I want to support the agency doing this. What I don't understand is why this policy is trying to be implemented on the backs of attorneys that you are trying to keep in the business of public defense. When the contracts were signed, they were signed for two years, but all the providers already knew about this retention money. So, the idea that, oh, we don't get this special thing that the Legislature gave us only for this thing, I don't really see how that squares when providers

already knew about this and were ostensibly going to get it by complying with the policies that they already agreed to.

I do agree, and I think it's totally fine to tie incentives to reporting on a timely basis, but the contract says the 20th. If there are ways to speed that up, that certainly would be helpful, but it's not lost on me that the agency in various forms, and certainly not the people now at the agency, have spent at least 10 years trying to come up with a data reporting system. So, I'm really encouraged to hear there's more cohesion now, but the idea that providers need to solve this by getting their data in quicker when the agency has had a very poor track record in the past with analyzing the data they do have, it's really problematic for me. So, I guess those are the concerns I have.

And then one final thing, I remember when there was incentive money given to nonprofit public defenders in 2014 and the consortium in, I think, 2015, and I remember the rift that caused when it was given to different providers at different times and how hard it is to give money for one year and then take it away because that feels like a real pay cut. And then you have providers leaving because they've gotten less money. So, dispersing retentive incentives over five payments feels an awful lot like a steady paycheck increase as opposed to an incentive, thank you for your work that you did. So, I would highly encourage the agency to think about whether you can model this policy in some way that's different. I know for my office, if I get this money, I'm going to pay it out in one or two lump sums because I don't want my attorneys to get a pay cut when they don't receive this a year later. But I know not every office has the luxury of being able to do it like that, and that's why I'm asking the agency to think about if there's a way to make this so it's not like a pay increase because it's going to feel like a pay cut afterwards. But that's all I have, thanks.

Chair Jennifer Nash: Commissioner Lininger.

Tom Lininger: I have a quick point to make that is similar to what Commissioner Reinhard said. I really do value the collection of data. I do think it strengthens our ability to make the argument for more funding. So, I wholeheartedly agree with that notion. But I also think one way we prove our credibility as a recipient of the Legislature's funds is to do what they tell us to do. And if I understand correctly, the appropriation was for a one-time disbursement of retention money. And I'm just wondering, is it clear that that could span five separate payments that sort of diminish the real value of the money to the recipient? And by the way, our first one, if I understand correctly, is unconditional, and the next four are conditional. I just wonder if somebody can address, do you believe that comports with legislative intent? Because earlier I heard the appropriation summarized as facilitating a one-time payment. I'm just concerned that we

might seem to be distorting legislative intent, or do they mean a one-time appropriation that we can trickle out however we want? Thank you.

Jessica Kampfe: Thank you, Chair Nash, Commissioner Lininger. My understanding of the legislation is that it's a one-time appropriation to the agency. So, these are not funds that are going to roll up. It's not a salary increase. It's a one-time appropriation to the agency. The legislation is relatively silent with regard to the mechanism by which the agency would disburse that payment. And so we've stepped into the space by creating a policy for how we would disburse that payment, but it's not clear from the Legislature what the expectation is. I can say that when we received the retention incentive from the E Board last time around, there was a lot of feedback from legislators when we went to report on how we'd spent that money at the Public Safety Ways and Means hearings about how were we showing that we were actually retaining lawyers? Like how are we measuring that and showing to the legislators that it was working to retain lawyers? And there was a question from some legislators about whether we were clawing back money from people that didn't stay if they got early payments and then they weren't there at the end, which we did not do. We structured the payments so that they were increasing in nature so that the earlier payments were less and there was a larger balloon payment at the end of the period.

Chair Jennifer Nash: Thank you, Director Kampfe. I sent a link in the chat to how it was that the commission in January of 2023 decided to allocate the retention incentive payment that the Legislature under the E Board gave. And there was, the commission did authorize that if an attorney left the contract during the period where they were receiving an incentive payment, that the contractor...that that money was clawed back at the end. So, I don't know if what you're saying is that didn't happen. And I'm not saying you're saying that, but I'm just saying that was part of the policy, and people can read what it is that the commission did. But essentially it was \$15,000 per lawyer per 1.0 MAC scaled. Depending on, you know, for attorneys that were less than 1.0. And then there were monthly payments that were made, and then half of those were made at the end of the biennium. And it was dependent on timely submission of reports, which meant by the 20th of the month. Because the commission heard that that was not happening. I will say that there is a provision in the contract that allows the agency to withhold payment for contractors who are not complying with reporting requirements. So, that already exists in the contract. Although to my knowledge, that's never happened. And they're working very hard, the agency is working very hard to make sure people are timely submitting reports because we need the data. So, that's just information.

I will say this, having other commissioners who carried over, we all had the experience where we had information presented to us about a policy that the

agency wanted to implement, and there were commissioners who didn't want to do that for one reason or other. And so we would take a vote and it wouldn't pass. And then we were delayed another month until the next meeting to try to come back, or we actually set another meeting to try to fix whatever the issues were. And I don't want that to happen because if we don't approve something in March, then we're not going to have it back before us until May unless we have an interim meeting. So, I think what might be helpful to the agency is for them to hear what commissioner's thoughts are about how they feel about the proposal itself, and what they would like to see as an alternative if they don't approve it. I think that would be useful information, so that we aren't here with a policy that's proposed to us in March and we don't approve it, and then the contractors don't have their funds. Commissioner Buckley.

Peter Buckley:

Thank you, Madam Chair, appreciate the opportunity. I'm trying to put all this together. I totally agree that the desire to get the data in a timely manner is a really valuable goal for the agency to set, though I'm uncomfortable with doing it in this manner. Again because the dollars were prioritized for retention bonuses. In other areas of state government, we've used retention bonuses in early childhood, for early childhood providers, for K-12 educators, and it's been successful in getting the dollars to people to keep them as part of the workforce. And I think that's the priority that still should be the priority given the crisis that we still face. I do understand the desire to move towards an earlier report date, but my preference would be to work with the provider community to say, "How are we going to get this done between now and the next contract so that between now and next contract, we have the capacity to put into the contract that the reports we do on the 5th of the month instead of the 20th?"

I would rather see it to be a collaborative process rather than a kind of incentive process using dollars that were intended for rewarding retention to reach a goal of data reporting, which we all share. So, I'm just uncomfortable with this as the vehicle for that. And I'm wondering if there's any other way that there could be a collaborative process with providers that says we're setting a goal that at a certain date, we're going to get to a capacity where reports can come in by the 5th. What do you need to make that happen? What has to happen for you to make that happen? And in terms of very small firms with two attorneys, what do they need? What do they need from the agency? Do they need some sort of ability to do the reports electronically that's simplified? What exactly do providers need to make this a process that works for all concerned? Thank you, Madam Chair.

Chair Jennifer Nash:

Thank you. Commissioner Lininger.

Tom Lininger: So, I thought Commissioner Mandiberg had a really insightful point, and I hear Commissioner Buckley also raising such a point. I would like to go ahead with some sort of reporting regime, but I'd really like to explore between now and March whether we can have variable requirements according to the setting. And I'm not sure what that would look like, but I thought Commissioner Mandiberg had really insightful comments about that. I just wonder if staff could perhaps give us an option that would adapt the requirements. Because I could imagine in certain settings, the 5th is going to work. In other settings, you might want to be more flexible. And perhaps this is like an interim type of measure, and ultimately we go to a uniform reporting requirement. But so I 100% back what Commissioner Mandiberg said.

Chair Jennifer Nash: Are there other... Oh, Commissioner Harris.

Rob Harris: Thank you, Chair Nash. I agree with Commissioner Buckley on this. I don't know that the Legislature intended to link these retention payments to lawyers to other functions of the agency, no matter how well thought out or necessary those changes might be. And I think the contracting community is not going to like this at all. We have contracts... They have contracts, I don't have a contract. They have contracts that they signed just six months ago. I mean, I guess you could say it's a 20-year-old policy, but it's actually a six-month-old policy because that's the contracts they signed. And then the Legislature allocated this money to retain lawyers, and then the agency wants to have quicker reporting, which there is some reasons for that, but they're unconvincing to me that they go to retention. And it's somewhat unconvincing that it helps them report additional information, feedback up to the Legislature about how valuable the retention is. Because you can make the same argument about any agency change that this makes it easier to practice law, therefore it must retain lawyers. And that's what this is. And it's really, I would say it's a tenuous and non-material, non-substantial connection to retention.

I do think that the retention payment should be allocated maybe quarterly over the term of the contract. I think that makes sense. We did that before. I would point out that the last time they did retention bonuses, I was actually managing a consortia at that time. The last time we did retention bonuses, yes, it was tied to reporting, but it was really tied to the contracts. If you are in contract, you get the payment. If you're out of contract, you don't get the payment. This is different. This changes the term of the contract. So, it is quite different. I think that the data being two weeks' pressure, number one, it's not going to be as accurate. And when you have bad data, sometimes that's worse than no data. Better data is the best. I don't know that that's going to change a judge's feeling about what capacity a particular lawyer has just one month reporting two weeks late. It may in an individual case, but I don't think it's substantial and material in this case improvement on what's going to happen. So, I understand why the

agency would like to have this policy change, tying it to the retention bonus that I think the Legislature clearly thought they were just going to go ahead and give to lawyers to keep doing this work, not tied to any change in the contract terms, is not something I would support.

Chair Jennifer Nash: Commissioner Parrish Taylor, do you have any feedback or input?

Jennifer Parrish Taylor: Yeah, actually I was just coming off mute, and I apologize if this was discussed, and I missed it because I came on late. I agree kind of with what folks have said, but I'm really into data. Just I know that there were hiccups around the database that was supposed to be created. And if we are moving to get folks to report their data, but there's no warehouse to house it, that doesn't necessarily make sense to me. So, I'm wondering if there was an update on kind of where we are with that process in terms of like, okay, if we're asking folks for this information, where is it going to go and who's going to process it to determine trends and all of those things? I guess that would be my question.

Jessica Kampfe: Chair Nash, may I respond? Thank you. Chair Nash, Commissioner Parrish Taylor, thank you for the question. I think there's two pieces there. So, the agency has been looking to procure an off-the-shelf financial case management system. That is critical infrastructure for the agency moving forward as we transition to the executive branch, and it's going to be really important for our ability to do any sort of quality assessment of public defense in the future. That project has been put on pause. We have just hired for a new chief financial officer who's going to start with us at the end of the month, and I hope that that project will resume shortly after he's on board.

The other piece is databases that the agency has built. And so we do have a data team. They are small, but mighty. And I'm very impressed with the work that they have been doing, and especially in the realm of building dashboards using Power BI. And they have been able to build a dashboard that is related to attorney capacity within our contracts. Currently, that dashboard's available to folks in the agency to be able to review, and we are working with some IT solutions to be able to share that information with contract administrators so that they can see for their own contract where they're at at a given point in time. And we hope that that information will help them to be able to manage their own resources within their contract, as well as to work with their local presiding judges and other public safety stakeholders around questions about what public defense capacity exists in the community. However, given that our caseload reporting data is coming in on the 20th of the month currently, there is a delay. Our data is about six weeks old in the contracts caseload reporting database, and so it's not as useful of a tool as it could be if our data was closer to real time.

Jennifer Parrish Taylor: And just one follow-up question, is that off-the-shelf solution cheaper or equal to the money that was kind of set aside for this project? Or you don't know at this point?

Jessica Kampfe: Thank you, Commissioner Parrish Taylor. We have not completed a procurement. So, we had drafted a request for proposal. And prior to releasing that RFP, we determined that it didn't meet our standards for what we needed, and so we did not release the RFP. Once our CIO is on board, we would expect to go through that procurement process and procure an off-the-shelf product. We have significant funding for this particular project. So, the Legislature allocated, probably going to get it wrong, I think it's \$8 million for the project. Over the past four years, we've spent \$700,000. So, we still have in excess of \$7 million for the project. This is an area where the agency does have sufficient funding to move the project forward. It's been other things that have caused the delay.

Jennifer Parrish Taylor: Right, sorry, just one more follow-up. Do you anticipate, again, I feel like I'm asking questions that you don't know because we don't have the people in place just yet. But I guess I'm curious of whether we still need that total amount. And if not, if there are opportunities to shift those dollars to other places that do need resources.

Jessica Kampfe: Thank you, Commissioner Parrish Taylor. I don't know how much it's going to cost because we haven't completed the procurement yet. I would, however, say that this money has been specifically allocated for this project and is tied to the project. We code all of our expenses to show that we are billing against this specific allocation. So, we would need to ask the Legislature permission to rebalance those funds into another area if we were to show that we had residual funding there. And I don't know if they would allow that, or if they would want that to be money that was returned to general fund.

Jennifer Parrish Taylor: Yeah, I would say avoid asking the Legislature about excess dollars if you can.

Chair Jennifer Nash: All right, unless someone else has something that they are dying to say that they've not already said, I think that we've provided the agency with sufficient feedback to be able to move forward. All right, thank you. Then moving on to the next agenda item, which is the annual report of the Audit Committee's activities, Scott Martin, Latham Stack, and John Hutzler and Director Kampfe. Thank you, Chair Nash.

Jessica Kampfe: We have with us today our Audit Committee chair, as well as one of the auditors with our agency, to talk to the commission about the work that the Audit Committee does. You will note that at your last commission meeting, you received an Audit Committee report that was submitted to the Legislature as

part of our presentation for this week. That report will be heard in the Public Safety Subcommittee of Ways and Means tomorrow. And I just want to put in a plug before they get started here for strong governance and oversight by the commission on this really important function for the agency. So, I am hoping that at the end of this presentation that one or more commissioners will volunteer to join our Audit Committee so that we have that strong link and oversight from the commission directly to the Audit Committee. Because I think it's really important that we are aligned in our mission, vision, and the direction that the agency is going, and we really need your support in doing this. So, with that quick plug, I will turn this over to Mr. Hutzler, our Audit Committee chair, and Mr. Stack, one of our auditors.

John Hutzler:

Thank you, Director Kampfe, Chair Nash, and commissioners. My name for the record is John Hutzler. I'm a former attorney, criminal and juvenile justice researcher, planner, and consultant, and public sector auditor. Most recently, I retired about a year ago at the end of my third term as the elected county auditor for Washington County. Currently, I serve as the chair of your commission's internal Audit Committee. The Audit Committee was established by the former commission during its January 2022 meeting. The Audit Committee charter, approved on the same day, requires that the Audit Committee report to the commission annually on its activities. This report fulfills that requirement.

By way of background, internal auditing is an independent objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance offices. OPDS operated without internal auditing until a budget note to its fiscal year 2021-23 budget required the agency to establish an internal audit function composed of two permanent full-time internal auditors and reporting directly to your commission. The Audit Committee is a special committee of your commission with oversight of the internal audit function. As a special committee, it includes members who are not commissioners.

For its charter, the Audit Committee is comprised of between seven and nine voting members, including a representative of the commission. To ensure its independence, a majority of voting members and the chair must be external to both the agency and the commission. The chief audit executive serves as a non-voting member of the committee. The makeup of your Audit Committee is illustrated in the graphic included in your materials. As you can see, its members include senior agency management, public defenders, public sector auditors, and a member of the commission. And as the director mentioned, with the change in commission membership, that position of commissioner is currently

vacant, and we hope the new chair will act promptly to appoint a new member of your commission to its Audit Committee.

The Audit Committee ensures that the internal audit function effectively assesses risks to the agency's mission and objectives, and complies with internal auditing professional standards, Oregon statutes, and administrative rules. Among other duties, the Audit Committee and its members are responsible for ensuring the independence of the audit function, approving the internal audit plan, identifying the level of resources that will provide the committee and the commission with information on which to make reliable risk-based decisions, advocating for adequate budget resources and an adequate level of audit staff, recommending actions to improve the quality of the internal audit function, and advising management and the commission if management is assuming an unreasonable level of risk.

Over the past 12 months, your Audit Committee has met quarterly as required, ensured that internal audits were performed according to professional standards, reviewed completed internal audit reports for quality, assured follow-up on internal audit findings and recommendations, provided advice and consultation to internal auditors on a variety of topics that bear on the effectiveness of the internal audit function, unanimously approved the internal audit plan for calendar years 2024-2025, identified two permanent full-time internal auditors as the level of audit staff required to complete the audit plan and provide the committee and the commission with information to make informed decisions, and advocated for agency management to provide adequate resources for the internal audit function, including compliance with HB 5030's specification of two full-time internal audit positions.

Which brings us to our statement of concerns going forward. The Audit Committee has been informed that management intends to redirect the second internal auditor position to perform management duties rather than internal auditing. This reallocation would make it impossible for internal audit to complete the audit plan approved by your Audit Committee and threatens the ability of the internal audit function to comply with professional audit standards. Since these are core responsibilities of your Audit Committee, we're bringing these concerns to the attention of the commission. I've also informed management that such action would be inconsistent with the requirements of the budget note requiring the establishment of an internal audit function staffed by two full-time auditors reporting directly to the commission. And with representations, the agency made the Joint Legislative Committee on Audits just last month regarding the internal audit function. For additional insights into the scope of internal audit, the Audit Committee or audits completed or planned, I refer you to the applicable attachments or to internal audit staff who are also in

attendance. Thank you for the opportunity to report on the activities of the Audit Committee and our concerns going forward.

Chair Jennifer Nash: Thank you very much for your comments and for your audit report and the materials that you have provided us. I appreciate them very much. Does anyone have any questions or comments? All right, I'll just say one thing just by way of context, and that is that there is I think it's fair to say, and Director Kampfe can correct me if I'm wrong, some perhaps, well, confusion might be too strong of a word. We're looking, we're seeking, the agency is seeking direction regarding the budget note as to whether the two full-time audit positions are supposed to be both internal facing or if part of that function was anticipated by the Legislature to be outward facing. And specifically that means are we supposed to be both positions auditing ourselves or is one position supposed to be...not one position, is part of that function supposed to be auditing who we're providing services to? We're sending lots of money to lots of people. We have performance standards. We have all of these things we're required to do. Are we supposed to be... As part of this audit function, did the Legislature have in mind that part of what we're supposed to be doing with those positions are outward facing?

We are appearing tomorrow in front of the Public Safety Subcommittee and this topic is going to be a topic of discussion so that we can get some, among other things, so that we can get some clarification because it is extremely important that we have internal audits. And I mean, I believe the commission completely supports that. And we also have a legislative mandate in some form or another that we're supposed to be doing external audits as well. And I think it helps us overall to be able to figure out exactly what the Legislature intended in that regard so that we can be in compliance and just be in compliance because that's our role as appropriate governance body. Commissioner Harris.

Rob Harris: So, to clarify that statement you just made because it did raise an issue I guess for me that I wasn't aware of because I read this report, but I didn't see this issue arise at that time. Maybe I missed it. When you say outward facing, are you talking like one auditor would be looking at the internal functions of the agency and how it's operating, and also their other function would be to look at the contractors and whether they're performing their contracts? Is that what you mean by outward facing?

Chair Jennifer Nash: I think that is part of the question that we have is what the Legislature intended in that regard. Yes. And Director Kampfe, you can jump in if I'm going far afield here.

Jessica Kampfe: Thank you, Chair Nash, Commissioner Harris, and Mr. Hutzler. I appreciate the conversation and I want the overall takeaway to be that I would really love for a

commission member to join our Audit Committee so that we have that unity of expectations and clarity from the top down and that the commission really is setting the vision, direction, and providing oversight on to answering these questions. We did submit the audit report to the Legislature, as required. And we are expecting significant feedback that the direction that the agency and the Audit Committee is going with audit may not fully align with the expectations of the Legislature, and that there was an expectation that audit happen in the compliance, performance, and audit division of the agency. The Compliance, Audit, and Performance Division really does oversight about the programs that the agency is running. And most of the programs that we're running are programs that are outward facing in terms of the contracts that administer trial level public defense, as well as the increased hourly rate program, the general attorney hourly programs. How are those programs running and functioning?

One of the mandates that we've gotten from Senate Bill 337 is that we develop quality assessments of those programs, that we start thinking about key performance metrics and measuring the quality of public defense that is happening. Those aren't functions that have been built out in the agency at this time. And that is a space where an internal auditor could be used in terms of auditing the programs. And so I would say that there is some lack of clarity with regard to the direction, and that there is need to get that clarification, both from the Legislature in our hearing tomorrow, as well as from the commission in its oversight and vision setting role. And so I really think that this is an opportunity for us to make sure that we have a shared vision and that our resources are aligned with the mission of the agency.

Chair Jennifer Nash: Thank you. And I will just echo and put a finer point on Director Kampfe and Mr. Hutzler's point about a commissioner being on the Audit Committee. It's not a suggestion, it has to happen. So, that is pursuant to the bylaws, something that I would do separately. So, I would like for you to email me if you want to be on the Audit Committee. And if I don't receive an email, I'm going to draft someone to do it, and it's not going to be me because I have too much to do already. So, that's the way it's going to go. So, just keep that in mind, and I would appreciate the feedback. There's one other governance piece and I see Mr. Deitrick here. The other governance piece that I started thinking about yesterday was because the Audit Committee was approved under the prior commission and the prior commission no longer exists, we need to reauthorize the Audit Committee. I mean, that will happen, but I think as a matter of good governance, we need to do that in our new bylaws. And I know we adopted preliminary bylaws and we're going to adopt updated bylaws in our next meeting and that definitely needs to happen so that we're very clear that we still have the Audit Committee, how it's comprised, etc. So, Mr. Deitrick, with that.

- Eric Deitrick: Thank you, Chair Nash. I was getting ready for the next update on governance and I agree we need to, developing the bylaws, include all of the commission subcommittees and other agency functions such as the Audit Committee.
- Chair Jennifer Nash: Thank you. And are there any other comments or questions or feedback or concerns that any commissioners would like to raise before we move on to the update on the Governance Subcommittee? Commissioner Harris.
- Rob Harris: Yeah, I would just say regarding this allocation of funding for this audit, I guess, position, whatever the auditing is supposed to be doing, that I want to make sure that our Audit Committee has sufficient resources to do the job. I think the CAP team, yes, it has the word audit in it, and it's been in existence for a few years, and whether or not these dollars for the two internal auditors was intended, like you say, to go to the CAP team just because it has the word audit in it or whether it was meant to audit the internal functions of the program. I don't know. It seems like it should be pretty clear, but I do want to make sure that this committee has the funding necessary to do its work.
- Chair Jennifer Nash: Yes, thank you. Agreed. Thank you. Are there any other comments or questions before we move on? All right, thank you very much, Mr. Hutzler, Mr. Stack. You didn't say anything, but thank you very much, appreciate it. All right, and we'll move on to the update on the Governance Subcommittee.
- Eric Deitrick: Thank you, Chair Nash, members of the commission, Eric Deitrick with OPDC. I intended this to be brief and given the timing, it will be brief. As you know, when we did our onboarding session, we talked about governance, and at the first commission meeting, this commission authorized a subcommittee on governance with the members being Commissioners Mandiberg, Harris, Addie Smith, Jennifer Parrish Taylor, and Jasmine Wright. We had our first meeting last week on February 1st. We talked about roles and responsibilities, governance, and bylaws. I would describe it as mostly a brainstorming session. Some of the things we specifically talked about were the statutory language in SB 337, particularly the use of the terms OPDC, commission, and members of the commission, what those mean with respect to each other. We talked about meetings, agenda setting, quorum. We talked about motions and how they should be conducted, voting. Talked about communication. We talked about subcommittees. We talked about the issue you raised earlier, Chair Nash, which is legislative advocacy. And another issue that I know came up earlier in the meeting today too is how does the agency, I think it was Commissioner Buckley talked about it, respond to formal complaints and concerns and how do those get documented?
- So, at the end of the meeting, the subcommittee elected Commissioner Mandiberg as its chair. We met yesterday to start discussing a plan for the

drafting of the bylaws. And the plan going forward is we're going to work on drafting bylaws. We're going to meet with the subcommittee again on February 29th, get input on those drafts. We're then going to meet again after we do some more work and meet again on March 14th so that we have time to bring a finalized document to the commission for the March retreat. And we intend to be able to meet those timelines.

So, one thing I wanted to add because we talked about it at the Governance Subcommittee and I don't think we talked about it fully with the entire commission yet. And we'll probably have to capture this piece somewhere in the bylaws, but in the past commissioners were eligible for travel related expenses with SB 337. All of the commissioners continue to be eligible for that, but also for a per diem that is I think tethered to the legislative per diem, maybe I think it's like \$151 per day of service. And so we will be working. Hopefully by the March retreat, we'll be creating an internal process, probably some sort of form for you all to fill out. But I think the idea is that any day, whether it's a commission meeting or just any day where maybe you have meetings or work related to your commission duties that lasts more than an hour, you'll be eligible for that per diem going forward. Unless – there are some exceptions – if you're already a state employee. So, I think our legislative members and Commissioner Lininger being professor at the University of Oregon will not be eligible, but for the rest of you, we'll keep you updated on what that process will look like. Thank you.

Chair Jennifer Nash: Thank you. Maybe you can answer this question in a subsequent meeting. I thought that the per diem was tied to your income as well, isn't it?

Eric Deitrick: Turns out it's not.

Chair Jennifer Nash: Oh, yay.

Eric Deitrick: So, we've gotten additional legal guidance from DOJ as well as some of our staff here have worked on this issue in the past. And so no, the income-based restrictions, based on understanding right now and everything we've spent the last two months looking at, don't apply.

Chair Jennifer Nash: Great, thanks for the information. I can buy lunch now. Kidding, in every aspect. Anyway, okay. Let's move on to we have a presentation on the 2021 ACLU Pay Equity Complaint. Jill Goldsmith from Workplace Solutions Northwest.

Jill Goldsmith: Hello, everyone. Thank you so much for inviting me to come. I have a PowerPoint that I'd like to share. So, just bear with me for one second here while I pull that up. All right. Can everyone see my screen? Thank you so much. So, I think that there are many new members of the commission, so I'd just like

to kind of go over, start from the beginning here. I may say some things that people are already very familiar with. And I apologize about that, but it is what it is. I just want to make sure I'm being thorough. And I believe there'll be plenty of time for questions as well. So, the ACLU sent a letter to OPDS in August, I believe, of 2021. And in that letter, they shared a couple of concerns. Number one, which is the subject of what I'm talking about today, that female defense attorneys shared concerns about pay equity. In other words, that there are systemic issues of paying women defense attorneys less than male defense attorneys, even though they're doing comparable work.

A second issue in that letter involved a personnel matter, and that is being handled separately. I was asked to bifurcate my work and provide two reports. So, there is a report on this issue that we're talking about today. And there is a report on the issue that involves the allegations of retaliation in a personnel matter. I want to say a couple things about the length of time that it took us to get here. Number of things contributed to that. There was a period of time, almost a year, it was about 10 months, in which I was not given access to information under a former executive director, and so that obviously puts things back. And then of course, when the case does recommence, then I had to go and spend time re-familiarizing myself with information and working it into my caseload, etc. So, there are reasons for that delay.

I also want to make a couple of comments about this concept of pay equity. My background is I'm an employment attorney. And we are talking not about employees, but we are talking about contractors. Necessarily though, informed by my knowledge of what pay equity is in employment law in looking at these issues. And so I do kind of refer to and inform by the way the law is in employment, just because that's what we're talking about here. But I also want to recognize that we're talking about contractors, not employees. So, let me just make sure. Everybody that I'm talking about and the information that I'm going to present on today concerns contractors, just to make that really clear.

There's a couple of ways that attorneys can be retained by OPDS to perform criminal law. You already know this. I'm just going to make sure it's all out there. One and the primary method is to have a contract and that is a firm or consortium, sometimes an individual, has a contract with OPDS to provide criminal defense services. Sometimes there is an overflow or there's a conflict and OPDS has had a need to reach out to an individual attorney, and they've retained attorneys on that individual case basis and paid them an hourly rate. This can happen because someone is assigned a case in court or because emails go around between all the different agencies saying, "We have these 10 cases that are unassigned, we need somebody." And so then the analyst at OPDS would start reaching out to people and asking them to take cases.

So, as this is done, there are policies that OPDS analysts have referred to, and those policies have provided for particular hourly pay rates for these kinds of cases. I looked at the period from 2003 forward because that's where I have some data. And so I just wanted to put this up here to make sure that we're all seeing these policy periods. So, the first one goes from 2003 to 2007, and it was for a lead on a regular case and attorneys paid \$40 an hour, and a lead on a capital case, they're paid \$55 an hour. Obviously, OPDS has a budget from the Legislature and they're trying to stay within the budget as they're doing these cases. And you can see that over time, these increased really pretty slowly up until 2020. And then I think we're all aware there's been a lot of increases more recently. So, this has changed, but this kind of pressure, the lower rates and the policies, have led to the request for exceptions for these pay rates. And this is the place where the disparities, the differences, the inconsistencies can happen.

So, there's another policy that OPDS has that says that individuals can ask for exceptions to the hourly rates, that's that chart I just showed. Those exceptions are for compelling circumstances which would impose financial hardship because of the length, the complexity of the proceeding, establish the fee that would result in an overall savings to the commission, or I'm sorry, OPDS because the person is so well experienced or qualified to do the case. And then there's a list of non-compelling circumstances. The policy really hasn't changed very much at all in the last 21 years. It's very, very similar to the current policy that you have. There's a few changes, but nothing really in terms of substance really.

So, the thing that I want to point out, the reason I have this up here is to make sure that everyone is aware that it's always been part of the policy for people to be able to request exception rates. A lot of people that I spoke to told me that they were not aware of this. It's not unusual for attorneys to be very, very busy and not to read all of the fine print in terms of the policies. They'll do what they need to do to take care of the case and to get paid, but they don't necessarily know about a lot of other things that are going on. And a lot of the female counsel that I spoke to told me they'd been unaware that there was a possibility of asking for higher rates and only found out through word of mouth. Some because they had relationships with staff at OPDS found out directly.

The reason I'm pointing this out, and this is again a concept from employment law, not from contracting law, but I just want to highlight it because it could be relevant. And that is when information is available to people with whom there is a relationship, and it's not available to people with whom there is not a relationship, then we have to look at the nature of those relationships. For example, if let's say a number of people working are available or have relationships with male attorneys more, it would be then more likely that male attorneys would hear directly from people that they could get these kinds of exceptions. So, I just raised that as an issue and it's one of the reasons that I'm

pointing this out here. We tend to be friends and have friendships and relationships with people that are like us or that are in our peer group, that kind of thing. And if there is a tendency to have relationships with people of particular races or certain genders, those are the ones who are going to find out the info.

I was able to review the emails of staff. That review was funneled through the former HR person because of concerns about attorney-client privilege, especially emails from the general counsel. In my review of the emails I did see, it appeared to me that the kind of information passing I'm talking about went fairly equally to both males and females under the current general counsel. But I'm pointing this out because we're going to talk in a minute about a place where I did find some disparity, and it's in a previous time period. Okay? Okay.

So, OPDS has maintained a spreadsheet, and it's just been maintained by hand, and it goes back to 2003. What they did when they got an exception request is they would go and enter it into this spreadsheet, and they put in the date, the attorney, the case number, the county, the defendant's name, whether the person was lead counsel, co-counsel, what they were asking for, and what they were approved, and sometimes there were notes. A lot of different people kept that spreadsheet up. So, a lot of different people were putting in information. When we got a copy of that, we also got copies of the underlying documentation on which it is based, which are the exception letters. So, when an attorney wrote in and said, "Can I have an increased rate for this case? Here's my justification." And it is either approved or denied, there's a letter, and they gave a number to that letter. So, it might be letter number 573 or 689, and so that's also in the spreadsheet.

There are many, many lines of data without a reference to a letter, so we had no documentation at all of what actually happened in that situation. And in going through the lines of data, we found many errors, inconsistencies, and missing data. So, somebody listed as being approved when they were denied or those kinds of things, which is normal when you have multiple people updating a spreadsheet. The other thing, and this did contribute to some of the delay, is that we'd have... Because I made requests for these and I got them, got all these exception requests. And then we'd update the spreadsheet and then we'd do the analysis and then we get another 200 letters, which necessitated us to redo it. Which then that kind of goes to some of the things that I'm going to be saying at the end, which tells me that current employees are not fully aware of where the data is, they weren't fully aware of how it was maintained, those kinds of things. I don't think anybody was withholding information on purpose, anything like that. I think it's just a matter of where's the data and how do we maintain it?

This spreadsheet did not identify gender. And so what we did, my former assistant, Maria, she's not with me anymore, she took another job, but she went through and looked up. Sometimes you can tell by a person's name, you can mostly tell by a person's name. I recognize that that may not be true so much anymore, but this is how we did it. We did the best we could. What gender they were, or when we couldn't tell, we looked up maybe the firm or the attorney's profile and saw how they presented themselves. So, I'm going over all of this because I think it's important to recognize that I am reasonably confident in the accuracy of the data, but we have to recognize that we're doing the best we can with data that was not necessarily intended for this kind of an analysis and was kept up by many different people over two decades. I heard somebody say a little bit earlier in the day that data has its problems, and we have to recognize that or words to that effect. And that's kind of the point I'm trying to stress right here.

Okay, so I want to now go move on to the analysis that I did. The first analysis I did was by calendar year. So, we started in 2003, and we were really looking at maybe up to 2022 because things began to change really radically after that. And you'll see that there's a drop-off in exception rates even after 2021, 2022. So, what I did was, by calendar year, grouped cases based on like cases. And so what I did was I used OPDS as current categories of hourly rates. So, C murder and murder are in all one group. Measure 11 cases are level two, so that's another group. So, I'm comparing like case to like case. So, we're looking at the hourly rates for like cases. And then level three, which is A felony, B felony, various juveniles, post-conviction relief, those kinds of thing. Four is C felony, domestic violence. And then five misdemeanors and the lower-level crimes. So, the idea here being that attorneys who are engaging in these broad categories one through five should be more likely to be getting similar hourly rates. That's the reason for that.

And then in doing this, when I determined the average and median hourly rates for all female and male attorneys, co-counsel and leads, by year. I also have a thing in the spreadsheet for a high rate, low rate, so we can see what the spread was. I also then did a median gap analysis based on the murder and capital murder exceptions by pay policy period. And the reason I did that is because they were by far the most exceptions, and I felt it was important to not only do the calendar year, but then also look at OPDS's pay policy year. So, I had that chart up a little bit earlier that showed that between 2003 and 2007, there was a set rate; between 2007 and 2014, there's a set rate. That's the policy period that I'm referring to when I say I did this median gap analysis.

And the way I did that was to, by those policy periods, I took all C murder and capital murder and murder cases, and analyzed them according to male median hourly rate, female median hourly rate, and whether there was a gap. So, that's

the information that I'm detailing on the slides that follow. Both of these analyses are detailed as appendices to the report that I have provided. So, it's all there in the report, but what I'm really going to focus on here is the median gap analysis because that sort of showed a pinpoint of where there could be some concerns. So, I just want to take you through that to begin with here. So, this is just an example of what I was mentioning before.

For capital murder, the first pay policy period is 2003 that I have access to, to 2007. The rates at the time for lead counsel were 55, and 40 for co-counsel. So, as you can see here, this is all attorneys who requested exceptions for capital murder, all lead both male and female, all co-counsel for both male and female, okay? Then all male attorneys, all female attorneys, and then broken down by male lead counsel, female lead counsel, male co-counsel, female co-counsel. Sometimes co-counsel in the spreadsheet is making a request on behalf of co-counsel, but we just treated those as a female co-counsel exception request or a male co-counsel exception request. So, as you can see, really consistent median across the board in this pay period, or sorry, policy period for the hourly rate and no gap. Oops, sorry, there we go.

The next capital murder period is 2007 to 2014. At this point, the rates are 60 and 45, okay? So, the median for all attorneys is 55. That would be because of the co-counsel rate, right? All lead counsel, the median is 60. So, some are above, some are... And the reason why somebody might be below is because they might've been appointed previously in a previous policy year and are making a request in the current policy year, and many of those were denied, but I counted those in the analysis. All co-counsel, male and female, the average rate was 55. And so the policy rate's 45, the median is 55. For all male attorneys, it is 55. For all female attorneys, it is 60. And here there's a pay gap actually in favor of females. And then male lead counsel, the median for six male lead counsel is 72.50. And for female, it's \$60 an hour. And the pay gap is to the detriment of women for 12.50 an hour.

Male co-counsel at 55, women at 60. Again, in the favor of women. So, this is for this pay period, which I recognize there's a gap here of 12.50 in this group, but the reason I didn't, I sort of looked at that and said, well, we've also got overall pay in favor of women that goes up and then co-counsel are ahead. And we have a small sample size. And if you have one or two people that are above the median in a situation like that, they're going to skew that. So, this is not the one that I did the more detailed analysis on. Here is the next policy period, which is 2014 to 2019. Again, capital murder, the rates went up \$1 an hour. And here you can see the medians are going up, 75, 80, 71. And again, we have no gap at all between all attorneys. We have a gap of \$5 an hour in favor of females on the lead counsel side and a gap in favor of males on the co-counsel side for \$4 an hour.

Rob Harris: Could I ask a quick question here just to clarify these numbers for me?

Jill Goldsmith: Sure.

Rob Harris: On the numbers under the number column, are these counting the specific appointments or are they counting lawyers, even if multiple?

Jill Goldsmith: Lawyers. Lawyers. Thank you so much, yeah.

Rob Harris: Thank you.

Jill Goldsmith: Appreciate the question. I should have clarified that. Thank you. So, the next one here, this is 2019, and this is just for this last three months. And at this point, it really begins to drop off for capital murder cases. As you can see, all attorneys, we just had three exceptions in this period.

Chair Jennifer Nash: If I may, I also have a question. Are these for contracted lawyers and hourly rate lawyers?

Jill Goldsmith: No, these are just hourly rate lawyers. The contracted attorneys before the Sixth Amendment analysis, they were paid by FTE, and so that was the problem, right? They were taking on too many cases. There's a different analysis and a different way of paying attorneys now. So, under contract, it is different. This does not relate to contracted attorneys in any way at all. This is just the hourly appointments. So, as we're tapering off here, I have just a couple of these. And as you can see, there is a gap, but again, we're talking about a very small number of attorneys, so hard to make broad conclusions about that.

Then the next part that I did, the more in-depth analysis is the non-capital murder. And again, here in this period, we do not have a gender pay gap based upon the median. This is the period where we do, and so here we're just talking about murder, non-capital, lead and co-counsel, the rate is \$45 an hour in the policy. And here are the medians for what males are being paid and what females are being paid. There's 88 attorneys altogether, about 66 lead counsel, 22 co-counsel, about 59 males, 29 females. So, about half the number of women. So, this is the one that I delved into more because there was this kind of consistent gap across the group. The next pay period, again, we have lead counsel, the median gap is \$5 in favor of men, but the co-counsel gap is \$5 in favor of women, and then no gap altogether over attorneys.

And then the murder, non-capital for '19 to 2020. Again, we're seeing a situation where the pay rates are going up, as you can see by hourly. And here women are actually benefiting more than men are according to the median gap analysis.

And then here's the last bits of data that I have on this, no gap in these. Because at this point, starting on 7-1-2020, the agency began to pay \$105 an hour for capital murder, and a lot of the people doing murder cases got that rate, and 75 for all others. So, that was the first kind of more substantial jump that the agency had taken. So, as I was saying when we were looking at this period, for 2007 to 2014 for non-capital murder, that was the place where there was kind of across the board for all leads, all co-counsel, a gender gap between males and female. So, this is just to remind you of what that was. So, you can see that there was that consistent gap.

So, what I did was I went and I looked in detail at those 88 cases where people were given pay exceptions in this period for non-capital murder. And I looked at them based on what people were requesting. So, people were writing in and saying, can I have \$50 an hour? Can I have 55? Can I have 60? Can I have 65? Can I have 85? Those were the categories. So, there were 35 people who asked for a bump up from \$45 an hour to 50, 28 who asked for a bump up to 55, 16 up to 60, 7 up to 65, 2 asking to go up to \$85 an hour. Of those in the column of people asking to go to \$50 an hour, there were 20 males and 15 females, and they were all approved. This is 34% of the males of this whole group and 52% of the females. Then there's a column of the next lowest amount that people were asking to go to, to \$55 an hour. Total requests, 28. Males are 20, females are 8. Number approved in full is 26, meaning 2 people asked for 55 and I think they were given 50. So, they were not given everything they asked for. Again, 34% of the males, so that's 20 out of the 59, and 28% of the women, that's 8 out of 28.

I think I want to draw attention to here is that 52% plus 28%, we're talking 80% of the women in this period asked for the lower amounts of increases. The third column here is people asking for up to 60, and here we have 12 males and 4 females, 20% of the males were asking for up to 60 and 14% of the females. Okay, up to 65 were at five males and two females, and 8% of the males and 7% of the females were asking for this. And then up to \$85 an hour, two requests only, both from males. And what the data showed was that hardly anyone got everything they asked for in these higher ranges, the 65 and 85, but they got more than the people who asked for lower. So, that ends up being why the data is skewed to show that men were paid a higher median because 80% of women were asking on the lower end of the range as compared to 68% of the men. And because the men were asking for more, they got more. They might not have gotten everything they asked for, but they got more than the women who asked for less.

This is important, and I'm going to expand on that. So, let me go back to this for just one second. This is in my conclusions, but let me just finish this thought. There is a concept, and this again goes to employment law, and this has to do with non-intentional discrimination. So, proving discrimination in employment

law, and forgive me if you all already know this, there's two different ways you can do it. One is through intentional behavior. It's called disparate treatment. The other one is unintentional behavior, disparate impact. Unintentional behavior is when we have a policy which is neutral. It's not intended to harm anybody, but it has the impact of disadvantaging a group. So, as an example, there are cases on this which are kind of making their way through the system in the employment law world, where disparate impact cases are being brought on A [Phonetic 03:27:18] and other kinds of policies where there is not objective criteria. Because then you're leaving it to the subjective judgment of an individual who we all operate from implicit bias, we all have that, right? And so if we have this unconscious desire to give something to somebody who fits that unconscious bias, we will be in a situation where we are going with a neutral policy, but the way it's implemented, it ends up being discriminatory. Again, this is an employment law concept, but I think that's relevant to this issue, and I'm going to expand on that in the conclusions.

All right, so generally speaking, there was an enormous amount of inconsistency in the way pay exceptions have been granted over these years. So, just one example, many exceptions were denied because the requests come months after the appointment, and others are granted with even longer delays. I could not discern a gender division in these kinds of exceptions. Other kinds of exceptions that I saw within the same policy period, one person is making \$20 more an hour for the very same type of case, or \$50 more an hour, or other things like that. And again, sometimes it's men making more, sometimes it's women making more. The general counsel, when I interviewed him, acknowledged that exceptions were not granted in a consistent manner. They did believe that consistencies got better after 2020, but there's still an enormous amount of inconsistencies, simply not based on gender, but just if one person gets one thing and another person gets another thing and then they talk, then there's an impression that there is unfairness.

I also just want to point out that as we were looking at all of this data and reading all of these letters, there were kind of time periods where it appeared that these decisions on exceptions were made in particular ways. So, for example, between the period 2003 to 2013, the primary staff involved in all of these exception decisions were from business services, so finance people, accounts payable. And lawyers really weren't involved very much, which is interesting to me because the pay policy exception specifically identifies the complexity of the case and other things like that as reasons for an exception, but it appears to have been financially driven. And then later on, the general counsel, starting in 2013, the former general counsel, began to get involved in these cases.

In one of the exception letters, there was an exchange between the finance people in which one of the finance people actually asked if they could help their boss make these decisions and streamline the process, and if the boss could give them what the objective criteria were for making these exception decisions. And the boss responded, "There really isn't any kind of a criteria for these requests." So, that's actually documented. And the employees that I interviewed, who came, a lot of them, after this time period were absolutely frank that there was just an enormous amount of inconsistency.

So, the other thing is, I did mention that I received emails from the current general counsel, and there was a lot going back and forth that I was able to see where there was information being provided to people who asked. If somebody asked a question about this, they got a response from the general counsel. And what he said to me was, "If people ask me, I'm going to respond." And basically, I think that's true because that's what the emails show. The reason that I am pointing this out though is that not everybody is going to think to ask, not everybody's going to have the relationship with the general counsel where they could ask this kind of question. And so there then becomes a subset of people who kind of have more information or behind-the-scenes information than the general population. Which goes to this issue that I've been pointing out, where you have the potential for a favored population to get more information.

All right, so my conclusions, and we have plenty of time for questions, I hope. So, I've already gone over some of the obstacles that I experienced here. And my big observation is that there has been considerable inconsistency in how attorneys are paid over the years and when they are requesting these exceptions. There is inconsistency with pay with respect to gender, but some years females are paid more, some years males are paid more, with the exception of that time period I drilled into with you. The inconsistency, I think, has led to very reasonable concerns about why females are being paid more than males because there has been such inconsistency. So, one attorney might say, "I'm getting \$70 an hour for this case," and then they find out their male co-counsel on another case got \$80 an hour, right? So, with that kind of information can breed these views. Okay.

I've alluded to this throughout my presentation, I have three overarching concerns here. And one is that just based on the exceptions that are being granted, it seems pretty clear to me that the exception spreadsheet was not used as a guideline to check on whether or not it was paying attorneys fairly for similar cases. So, they had that data, but then they were sort of doing it on a case-by-case basis. That decision was made outside of the context of the spreadsheet, and the spreadsheet was really just a data collection process. And I've already mentioned this, but OPDS has not had an objective criteria for

consistently determining whether and how much, and for how much to approve these hourly rate exceptions.

The other overarching thing is that there seems to be a tendency, my belief in having done this work is that the exception approvals are driven by what attorneys asked for. Meaning that if the attorney asked for more, they might not get everything, but they might get more than what they would get if they asked for less. And if women are asking for less, then that could end up being a reason why they are getting less. And overall around the round numbers, and this is a rough estimate, approximately two-thirds of all the numbers who are asking for these exceptions were men, and about one-third were women. So, some years you had a very small number of women in the dataset to be able to do this analysis, which can create the tendency for skew. So, I just want to acknowledge that. So, either there's significantly fewer women qualified by OPDS to do some of the work that was being done, or there were just significantly fewer women in the pool of qualified criminal defense attorneys, or women were simply less aware than men that they could apply for these kinds of exceptions.

I did try to find out from OPDS who was qualified to do what kinds of cases historically, but what they do when they have an attorney who applies for something is they have a database on that attorney, and they say they're qualified for whatever they're qualified for. And then when the attorney applies to be qualified for a higher level of case, they simply add that, so the historical data of what they were qualified for in the past is not able to be identified. So, I couldn't do that analysis to figure out were there in fact equal numbers of qualified women and men to do capital murder cases, but only two-thirds of men are applying, but only a third of the women are applying. So, I could not do that analysis. And I believe that is my last. It is. Oh, my last is just for those who are listening, questions and public records requests, especially this is the information that I was asked to share for those who would like to make any records requests about this matter. So, I'm going to stop my share, but I would like to know if there are any questions.

Chair Jennifer Nash: It does not look like there are any questions but thank you very much for your very thorough analysis and very thorough report. I'm very, very pleased that you were able to get this concluded, and thank you very much for the information that you've provided us.

Jill Goldsmith: Thank you very much. All right. Bye-bye.

Chair Jennifer Nash: All right. And now we will move on to the executive director's update.

Jessica Kampfe:

Thank you, Chair Nash, members of the commission, Jessica Kampfe, executive director. I want to start by thanking Jill Goldsmith for her diligent work to investigate the concerns raised by the American Civil Liberties Union. While this investigation looked at the past, it still provides valuable lessons that are guiding the agency's future. The Oregon Public Defense Commission needs to improve its data collection, record keeping, and organizational transparency. We have put in place protocols which spell out case pay rates based on objective standards. The pay rate criteria is now publicly available on our website and has been shared with our providers, which is another way in which the Oregon Public Defense Commission is working to be more transparent. And while this has gone through several iterations, I'll speak to the most recent ones.

In September, we adopted a new attorney hourly rates based on case type, and these new hourly rates went into effect on October 1st of 2023. At the same time, we updated the temporary increased hourly rate program and limited the scope of clients eligible for that program to those who are in custody and unrepresented. The rates for that program are also posted on our website. In December of 2023, we adopted a preauthorized payment rate for vendors and committed to bring that policy back in front of our commission for review quarterly, and it is scheduled for your review in March of 2024 at the commission meeting. And that policy is available on our website. All of these policies are now based on objective criteria and no longer based on subjective asking for more money and a subjective criteria about whether or not that would be granted. So, they are based on case type and attorney qualification, not based on asking for more money, and those policies are publicly available.

Additionally, we have built a database for our hourly attorneys handling cases under the temporary increased rate program. So, this database includes the attorney's name, their hourly agreement, their qualification, the geographic area they're working in, and the cases that they're appointed to on an hourly basis. The Oregon Public Defense Commission aims to expand this transparent database to all hourly attorneys as we build the infrastructure necessary to create a panel of hourly lawyers by 2025. And so I did want to make sure that the commission knows that we are working to address some of the issues that were identified in the ACLU's report, but they haven't all been addressed yet. And there is still more work for us to do, especially in the area of data collection, record keeping, and organizational transparency. So those are my comments related to the ACLU investigation, and I really do appreciate Jill's work in bringing this together and putting on a presentation to inform our commission. It's my understanding that she'll be turning those reports over to the agency today. And so if people are interested in reviewing the pay equity report, they could submit a public record request to the agency for that document.

I also wanted to note that at our last commission meeting, an investigator that we work with questioned how the Oregon Public Defense Commission determined the rates it was setting as part of our preauthorized expense policy. And the primary driver for setting Oregon's hourly investigator rates was financial. During the 2023 legislative session, the Legislature specifically allocated funding to increase the hourly rates for investigators. That was a specific direction with a line-item investment from the Legislature. The agency worked to establish rates for preauthorized expenses that allocated the increased funding to investigators and stayed within our budgetary limitations. In drafting the preauthorized expense policy for the commission, agency staff gathered information from several states, including Nevada, Washington, California, and Idaho, as well as entities, including the United States courts as background for the policy.

The policy team, Oregon's Public Defense Commission's policy team consists of our CAP manager, Ms. Freeman, whom you met today, as well as two policy writers, one of whom is Amy Jackson, and the other of whom is on leave from the agency. When the agency was questioned about the research that was done to gather this information from the jurisdictions, our CAP manager reached out to the staff person who's on leave and asked for that documentation. And we learned that the research was completed by searching online for rates and that there were not documents to share. I asked Oregon Public Defense Services Commission staff to briefly attempt to recreate such a search and quickly found pay schedules from the Oregon federal CJA rates; King County, Washington, expert fee schedule; San Bernardino, California, superior court fee schedule; Santa Barbara, California, superior court fee schedule; Nevada County, California, superior court schedule; as well as policy information from Idaho and Nevada. Although we did not find specific rates for non-attorney vendors in those states, it appears that at least in Nevada, most counties allow attorneys to spend up to \$2,500 without pre-authorization.

While I can't attest to the specifics of the research done in neighboring states before the pre-authorized expense policy was presented to the commission, I can say that I have every reason to believe my staff when they tell me that they did that work. The Oregon Public Defense Commission does not currently have adequate protocols for data storage and file sharing within our workforce, and that does make it difficult for us to recreate research and be able to provide it in a transparent way. There is work for us to do here. And I want to note that some of this work is set out in the agency's remediation plan, which specifically identifies a need to build and repair relationships and break down silos with public safety partners, stakeholders, and other state agencies; a need to ensure programs and activities are coordinated and operate efficiently and effectively; and a need to implement internal data analytics beyond reporting to include research and complex data analysis. So, we are aware that these needs exist

within the agency. They are part of our remediation plan, and we are taking steps to address them. That concludes my comments with regard to the investigators concerns.

And my next comments are I wanted to alert the commission that yesterday the Ninth Circuit Court of Appeals heard oral argument on the temporary restraining order granted by Federal District Court Judge McShane, which directed Oregon sheriffs to release people from pretrial detention if they were not appointed a lawyer within seven days of their arrest. And that the implementation of that temporary restraining order has been stayed while the appeal is pending. So, the next step in that appellate process occurred yesterday, and we are anticipating that there will be an opinion issued at some point in the future by the Ninth Circuit Court of Appeals. We don't have any direction on when that might happen or what that opinion might look like at this point in time. Chair Nash, I see that Commissioner Buckley has his hand up.

Chair Jennifer Nash: I'm sorry, I was busy taking notes. I didn't see that. Commissioner Buckley.

Peter Buckley: Thank you. Thank you, executive director. Just looping back on the experience that we had with the information provided by the agency indicating that there was an analysis done comparing rates to other states, I understand the explanation you've given. My hope is that in future practices that the commission isn't provided any information that does not have background information that can be double-checked, that we can be able to check the sources. If the agency tells us that they've compared something to the state of Idaho, then we should be able to ask, "Can you show us that data from the state of Idaho?" It's basic practices that we just need to insist upon.

I think the gentleman who wrote in now multiple times deserves a direct response, and I believe that deserves an apology from the agency as well. And I actually think the commission deserves an apology too to have materials presented to the commission as if there had been a detailed analysis that the commission could reference. And then it turns out there was not a detailed analysis that the commission could reference. We just need that information to be accurate, we need that information to be viable, and we need that information to be something that we can double-check on, dig into. So, that's my thoughts on this after looking at this for a couple months. And I think we've had these discussions before, and you've mentioned it in terms of remediation plan. We can't repair the relationships if there is a mistrust that the information is not solid, solid information, and that there has to be communication, consistent communication between the agency and the commission, obviously, but also to anybody who's working in the field. We're all in this together trying to solve, not only this crisis, but to build a system that actually works well for all

Oregonians, and we just have to hold that standard high. So, thank you for listening to my comments.

Chair Jennifer Nash: Thank you, Commissioner Buckley. I wholeheartedly agree. I mean, each one of us has a professional reputation and a personal reputation, and we go before public bodies and members of the public and other interested people, and we make representations based on information that's provided to us. And to find out that that information is either wrong or can't be duplicated or can't be proven to be accurate when the agency historically has had a difficult relationship with transparency is really troubling. So, I agree wholeheartedly with Commissioner Buckley's comments and would hope that we could move past this. I will also say, Director Kampfe, I mean, I have, and the commission has expressed to you a number of times our confidence in your leadership, and we continue to have that confidence in your leadership, and we hope that you will take the appropriate measures to ensure that the information that the public and that we're being provided is accurate. Commissioner Harris.

Rob Harris: Thank you, Chair Nash and Director Kampfe. I 100% agree with Commissioner Buckley and Chair Nash having done this work for decades now. And I think one of the reasons I'm on this commission is to call these questions occasionally or point out where I think we can have a better relationship between the different [Distortion 03:49:13]. Quite often the agency viewed the providers as certainly partners, but also who they had to have a contractual relationship with as well. Early presentation presented that dichotomy pretty well. But when something like this happens with this particular incident, I think I agree with Commissioner Buckley that just a factual report about what happened is certainly appropriate, but may not quite go far enough to reach out to the community who feels like they're not getting correct or transparent information. Because if we don't do that, then that could seep over to the entire agency.

I feel like this director, Director Kampfe, and many or most or all of the current agency employees [Distortion 03:50:09] their best and see the problems and recognize it and understand the work that needs to be done and the challenges with an agency that [Distortion 03:50:20] functioning and now has been told you got to make this huge [Distortion 03:50:24] two years. That's a lot of work. And I think taking every opportunity like this to reach out to the community and say, "Yes, not like this, but do better," that's unfortunate. I apologize. Is really part of the process [Distortion 03:50:40] of what happened, although both are necessary. That's my comment.

Chair Jennifer Nash: Thank you. All right, Director Kampfe, I'm sure you have more to tell us.

Jessica Kampfe: Well, thank you for that feedback from the commission. And I do think that as the agency matures, we need to be improving our research and labeling and our

ability to organize data so that we can have the level of transparency that the community expects from us and that they deserve. So, I appreciate the feedback around the agency taking accountability in this area. The only other thing that I wanted to let you all know was that we have hired for the chief information officer position, and he will be starting with us on the 27th. His name is David Martin. He started at Treasury and was most recently at the Oregon Military Department. So, he comes to us with executive branch experience, and we're really excited to welcome him aboard and have that position filled. We are currently recruiting for two project managers to support the IT transition as well.

Chair Jennifer Nash: Wonderful, thank you. Are there any questions about the executive director's report? All right, we don't have a future business item, but I'll just mention that in March, we have the two-day retreat that is occurring in the Multnomah County area, and I'm sure we will be having further information about where and exactly when and how that will be occurring. As I already said earlier, Measure 110 hearing is five o'clock today. And then the agency will also be presenting its reports to the Public Safety Subcommittee on Ways and Means tomorrow at three o'clock.